

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW MEXICO
3 UNITED STATES OF AMERICA,
4 Plaintiff,
5 vs. NO: CR-15-4268 JB
6 ANGEL DELEON, et al.,
7 Defendants.

8
9 Transcript of excerpt of testimony of
10 BRYAN ACEE
11 January 31, 2018 and February 1, 2018
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1 Wednesday, January 31, 2018

2 THE COURT: The first witness is Mr. Acee?

3 MR. CASTELLANO: Yes, Your Honor, the
4 United States calls FBI Special Agent Bryan Acee.

5 THE COURT: Mr. Acee, if you'll come up to
6 the witness stand on my right, your left, before
7 you're seated, Ms. Standridge will swear you in.

8 BRYAN ACEE,
9 after having been first duly sworn under oath,
10 was questioned and testified as follows:

11 THE CLERK: Please be seated, and spell
12 your name for the record.

13 THE WITNESS: Good morning. My name is
14 Bryan Acee, B-R-Y-A-N, A-C-E-E.

15 THE COURT: Mr. Acee. Mr. Castellano.

16 MR. CASTELLANO: Thank you, Your Honor.

17 Ms. Standridge, before we begin, would it
18 be possible to have the visualizer? I think the
19 computer screen is up there now.

20 THE CLERK: It's on.

21 MR. CASTELLANO: It will be a little bit
22 before --

23 MR. LOWRY: Your Honor, we have a hand
24 raised in the jury box.

25 JUROR: We're having trouble hearing.

1 THE COURT: I've told them to speak up.
2 Particularly at that table, grab a microphone. I
3 told them before y'all came in. So --

4 DIRECT EXAMINATION

5 BY MR. CASTELLANO:

6 Q. Please tell us about your training and
7 experience.

8 A. Yes. I began my law enforcement career in
9 1997. I'm just short of about 20 years. I started
10 out as a police officer and a detective. In 2008 I
11 applied for a job with the FBI as a special agent,
12 and I was hired the following year. So I've been an
13 FBI special agent since 2009.

14 Over the past just about 20 years, I have
15 worked gangs and drug violations and organized
16 crime. Of course, as a police officer I spent some
17 time doing patrol, and when I was able to promote
18 out of that, I worked as a detective, again working
19 gangs, drugs, organized crime.

20 The FBI, after graduating the academy,
21 sent me to New Mexico. I worked here in Las Cruces
22 for about five and a half years, and then I was
23 transferred up to our Albuquerque Field Office in
24 Albuquerque, where I was assigned to the gang task
25 force.

1 Q. What are your current responsibilities?

2 A. So I'm a full-time FBI agent. I work gang
3 and organized crime investigations. I have some
4 collateral duties, one of which is I'm a firearm
5 instructor for the FBI, so I help agents do their
6 qualifications and training with the firearms. I'm
7 one of our -- I've been a member of our SWAT team
8 for a long time. I'm one of our team leaders now
9 for this region, so when the FBI SWAT team has a
10 call-out somewhere, I'll respond to that. And I
11 serve as a training agent, basically a mentor, a
12 senior agent to the new agents when they graduate
13 the academy and they're assigned to Albuquerque.
14 Some of those agents are assigned to work with me
15 for about two years, and I'll stop there.

16 Q. What types of responsibilities do you give
17 the agents under you when you're training them?

18 A. Well, it's like learning to drive a car, I
19 guess, if I could use an analogy. I'll start out by
20 driving and doing most of the stuff, and as they
21 gain that aptitude and extra confidences and
22 abilities, they'll start to take over, such as in
23 interviews, I'll do many of them so they can see my
24 style. We'll often debrief after each incident and
25 talk about what was good, what was bad. If

1 everything goes well, about six months to a year
2 into it, those agents are starting to conduct
3 aspects of the investigation on their own under my
4 supervision.

5 Q. As part of your training and experience,
6 have you had any teaching opportunities?

7 A. I have.

8 MR. LOWRY: Relevance.

9 THE COURT: Overruled.

10 A. I'm an adjunct professor for the FBI in
11 the areas of gangs, drugs, and the Juarez Cartel.
12 I've also served as a guest instructor at the
13 University of New Mexico and here in Las Cruces at
14 NMSU on those same topics.

15 BY MR. CASTELLANO:

16 Q. Are you considered by the FBI to be a
17 subject matter expert in any areas?

18 A. Yes, two; the first being the Juarez Drug
19 Cartel, and now the SNM Gang.

20 Q. Do you have any expertise in terms of
21 firearms and interstate commerce?

22 MS. JACKS: Your Honor, I'm going to
23 object because I think we were told specifically
24 that Mr. Acee is not testifying as an expert.

25 THE COURT: He's not testifying yet. He's

1 giving his background.

2 MR. CASTELLANO: He's not, Your Honor.

3 THE COURT: Overruled.

4 BY MR. CASTELLANO:

5 Q. So let's talk about your qualifications
6 when it comes to firearms and the interstate nexus.

7 A. I completed the ATF's Firearm Specialist
8 Academy. That's significant in federal
9 investigations, in that in order for the Government
10 to charge a firearms violation, we have to show
11 that, one, it's a firearm; and two, that it traveled
12 in interstate nexus, so over state lines. So it's
13 an area of training, just to be able to make those
14 determinations and investigations.

15 Q. Are you considered the lead case agent in
16 the investigation of the SNM prison gang?

17 A. I am.

18 Q. And did that investigation take place
19 largely in the New Mexico prison system?

20 A. Yes, sir.

21 Q. And why did the FBI get involved in a
22 state gang matter, if they're considered a state
23 gang that you're investigating?

24 A. Our involvement focused on racketeering
25 activities, which are a federal violation. They --

1 racketeering activities are composed of numerous --
2 what would otherwise be state violations such as
3 murder, assault, robberies, things of that nature,
4 can be investigated by the Government as
5 racketeering activity.

6 Q. And was that your plan when you got
7 involved with this case?

8 A. Yes.

9 Q. How did you first get involved in this
10 case and when?

11 A. In early 2015, I think it was late
12 February or early March, I was up at the
13 Penitentiary of New Mexico in Santa Fe. That was
14 also where the Department of Corrections
15 headquarters is. I was up there on a separate gang
16 investigation involving a California prison gang
17 that had moved out to New Mexico, when I was
18 approached by some officials from the Security
19 Threat Intelligence Unit. They go by the acronym
20 STIU. Basically, they're a gang unit, and those
21 officials provided me with eight letters that they
22 had intercepted from one of their informants within
23 the prison, that was to send the letters out to
24 members -- to people on the street.

25 And they presented those letters to me,

1 explained that the letters were from some of the
2 bosses within the SNM Gang, and that they called for
3 the murder of two Department of Corrections
4 officials, the first being the cabinet secretary,
5 Gregg Marcantel, and the second being the head of
6 the gang unit, the statewide prison gang unit,
7 Dwayne Santistevan.

8 Q. What did you do after receiving this
9 information?

10 A. I opened a case on the SNM Gang. We
11 comprised a task force and we began investigating
12 not only those threats but the gang as a whole.

13 Q. Who did you try to partner with to further
14 this investigation?

15 A. The task force was comprised of the FBI,
16 the New Mexico Corrections Department, and the
17 Bernalillo County Sheriff's Department in
18 Albuquerque. Those were I'll call the full-time
19 task force participants. We also had ad hoc or
20 part-time participation from all of the jails and
21 detention centers in New Mexico, as well as some of
22 the cold-case homicide units from the different
23 police departments and sheriff's departments around
24 the state.

25 Q. As part of your investigation, did you

1 visit any of the state's prisons?

2 A. I think I've been out at all of them, yes.

3 Q. So let me ask you this: You mentioned
4 that you were at the prison in Santa Fe. What is
5 that normally referred to?

6 A. PNM.

7 Q. Is that the Penitentiary of New Mexico?

8 A. Yes.

9 Q. And when you're at PNM in Santa Fe, are
10 there facilities there known as the North and the
11 South?

12 A. Yes, sir.

13 Q. Please explain that to the members of the
14 jury.

15 A. Simply stated, there are two facilities,
16 similar looking. One is a little bit to the north,
17 and immediately south of that is the South. The
18 North facility is also referred to as the Level 6.
19 That's the highest, most secure facility in our
20 state. The South is a lesser secure facility, and
21 at the time housed the lower Level 5 facility, and
22 at the time it housed many of the state gang
23 members. I think they call them the predatory
24 offenders; different units within that facility were
25 housed at Level 5.

1 Q. You told us about the North and the South
2 in Santa Fe. Is there another facility often
3 referred to as the Southern?

4 A. Yes.

5 Q. What's the name of that facility?

6 A. The Southern New Mexico Correctional
7 Facility is the facility here in Las Cruces. I
8 often would confuse the South with Southern, so
9 there is definitely a distinction there.

10 Q. You also mentioned partnering with
11 cold-case homicide units. What was the purpose of
12 doing that?

13 A. When we opened up the case on the SNM,
14 through our initial review of hundreds of documents,
15 we discovered that there were at least a dozen
16 cold-case homicides around the state that there was
17 suspected involvement with the SNM prison gang or
18 SNM members who were on the street and those cases
19 hadn't been solved. So we started collaborating
20 with the cold-case units to let them know we were
21 looking into the cases, and we'd provide resources
22 and partner up with them.

23 Q. I think you touched on this. When you
24 refer to the term "cold case" in terms of a
25 homicide, what does that normally refer to?

1 A. The trail has gone cold. These are older
2 homicides, some dating back to -- in my case file, I
3 think we had some homicides dating back into the
4 '90s.

5 Q. I want to talk to you about some of the
6 investigative techniques you used as lead case agent
7 in this case. What types of, I guess, categories of
8 techniques did you use?

9 A. I guess I'd categorize them as traditional
10 techniques and then advanced techniques.

11 Q. What would be some of the traditional
12 investigative techniques that you would consider?

13 A. A review of prior case files,
14 collaboration with other law enforcement, state and
15 local, interviewing former members of the gang,
16 associates of the gang, family members, witnesses,
17 reviewing -- in this case, since it's a prison gang,
18 there are going to be prison files. Reviewing
19 those, reviewing old police reports. Trying to
20 develop informants within the gang. Conducting
21 surveillance, conducting drug and firearm buys, and
22 serving subpoenas, search warrants, analyzing phone
23 calls. That sort of stuff I would call our
24 traditional investigative means.

25 Q. Did you -- as part of this, part of the

1 investigation, did you ever try to partner with
2 probation and parole authorities?

3 A. We did. So when I say we partnered with
4 the Department of Corrections, they oversee the
5 Probation and Parole Department as well.

6 Q. And what type of things would you do with
7 probation and parole officials?

8 A. We would often accompany parole officers
9 when they conducted home visits or interviews with
10 SNM members who were on the street.

11 Q. For what purpose?

12 A. To be introduced to them, to collect
13 information. The parole officers oftentimes were
14 allowed to search their premises, to leaf through
15 their document, notes, letters. And so we would go
16 to accompany them so that we could have potential
17 access to that information and that we could assess
18 some of these offenders on the streets for
19 ourselves. I'll be honest, prior to this
20 investigation I didn't know a lot about the SNM, so
21 I was educating myself on the gang.

22 Q. All right. Is this still the 2015 time
23 period?

24 A. Yes.

25 Q. Now, you also mentioned approaching gang

1 members or suspected gang members. How easy or
2 difficult was that, from time to time, to meet with
3 them or gather information from those individuals?

4 A. I don't want to say it was difficult.
5 There were some challenges with it. It depended if
6 we wanted to overtly let them know we were the FBI,
7 or if we wanted to maybe not broadcast that when we
8 arrived and just assume a position of supporting
9 parole. As we gained momentum in the investigation,
10 most of my contacts with the SNM became overt. We
11 would just let them know who we were and why we were
12 talking to them.

13 Q. And what was the variety or array of
14 responses you would get when overtly meeting with
15 people who were either members or suspected members?

16 A. Well, everyone was respectful, in terms of
17 respectful that the FBI agents were there to talk to
18 them. Not everyone wanted to talk to us. Many did,
19 and in different -- in varying levels of
20 cooperation. For example, some would talk to me,
21 but they wouldn't want to go on the record. Some
22 would say, "Yeah, I'm down. I'll tell you what you
23 want to know."

24 Q. As you begin using these initial
25 techniques to begin looking at the gang, what types

1 of assessments are you making about this
2 organization?

3 A. What I'm looking for, in any criminal
4 organization, is their vulnerabilities. As we study
5 them, our objective is to collect facts, to collect
6 evidence, and what routes would allow us to do that.
7 So in looking at the vulnerabilities of the SNM, one
8 of the major ones that we noticed and we focused on
9 was drug trafficking.

10 Q. What about firearms?

11 A. As well as firearms. I think that goes
12 hand in hand with drug trafficking, but firearms and
13 drug trafficking.

14 Q. Now, when you talk about crimes like that,
15 what would you do when you would come across a
16 violation of either the drug laws or firearms laws?

17 A. So one of the things we kept our eye on,
18 one of the important reasons to liaison with the
19 state and local officers is, I let them know if they
20 arrested any SNM members or associates, to give us a
21 call, because oftentimes the SNM members had prior
22 felony convictions. So we would have jurisdiction
23 there where we could adopt the case, take it from
24 the state and local level, bring it into federal
25 court and charge them with being a felon in

1 possession of a firearm. The federal drug laws are
2 much like the state laws, and so I could adopt
3 state-level cases and bring them into the feds so
4 that I could prosecute them at a federal level.

5 Q. And when it came to drugs, for example,
6 did you do any proactive work on the streets?

7 A. We did. We did what I'll refer to as
8 controlled buys. We also did undercover buys,
9 targeting members and associates of the SNM.

10 Q. And what would normally be the
11 follow-through when you conducted a controlled buy
12 of somebody?

13 A. Well, do you want me to explain what --
14 the process of the controlled buy or what happened
15 afterward?

16 Q. Let's begin with the process and then
17 afterwards.

18 A. Sure. So a controlled buy, in simple
19 terms, is a normal drug deal; it's just that we're
20 controlling it covertly. So typically the way it
21 works is, we have an informant who has access to
22 said drug dealer, in this case an SNM dealer. The
23 informant meets with us. We cover what the
24 expectations are, what the procedures should look
25 like. We've already arranged how much we're going

1 to purchase and what it's going to cost so that
2 we're prepared for that.

3 When it comes time for the informant to
4 make the purchase, we establish a surveillance team.
5 After conducting a briefing, we set up on the
6 location where we're going to do the buy so that we
7 can watch it, and then I equip the informant with a
8 recorder and a live wire. That's important, so
9 that, one, it records; and two, I can hear the
10 transaction, because they're dangerous.

11 And one of the things that we have to have
12 in place is a rescue team in case it's a rip-off or
13 a robbery or something else occurs that would
14 necessitate the agents rushing into the scene to
15 render it safe.

16 Before we send the informant to make the
17 purchase, we search him or her and their vehicle to
18 make sure there is no contraband, there is no drugs
19 in the car, there is no extra money. If they have
20 money, I hang onto it; I count it in front of them,
21 and I'll give it back to them later because we don't
22 want any extra drugs purchased.

23 Once the transaction happens, it takes
24 place, we're listening to it, and watching it from a
25 surveillance platform. The informant drives away

1 from the drug deal, meets us at a predetermined
2 location. We collect the evidence, we debrief them,
3 we search them and their car again, again to make
4 sure there is no extra contraband or funny business.

5 Transitioning to the second part of your
6 question, we use those controlled buys to establish
7 probable cause to arrest people and to serve search
8 warrants, which was a big part of this
9 investigation.

10 Q. You mentioned the use of informants. Do
11 you sometimes also use undercover agents?

12 A. Yes. It's difficult to have an undercover
13 agent cold-call somebody or meet them. So we'll use
14 the informant to do the initial purchases, then
15 they'll introduce their cousin or their friend, or
16 someone, and that's when we'll insert an undercover
17 agent to take over those buys.

18 The same procedures, protocols take place
19 when the undercover does a buy, minus searching
20 them. I wouldn't search an undercover FBI agent,
21 but all the other safety precautions and
22 evidence-handling precautions are there.

23 Q. On that scenario, you mentioned
24 introducing somebody as friend or a cousin. Is that
25 friend or cousin the undercover agent?

1 A. Yes.

2 Q. Now, through some of these proactive
3 techniques, do you have examples of people from this
4 case who you arrested under those circumstances?
5 Let me begin with someone named Mario Montoya.

6 A. Yes.

7 Q. What happened with him?

8 A. I utilized an SNM member who was willing
9 to work with us. I signed him up as -- excuse me.
10 He was already a Bernalillo County Sheriff's
11 informant. And so in my liaison with that
12 department, I found out that they had an SNM member
13 who could make buys from other members. So we
14 utilized that informant to buy from Mario Montoya.
15 And following those same protocols I just explained,
16 we did a series of buys from Mario.

17 Q. Now, you said you utilized an SNM member.
18 How did you know that person was a SNM member?

19 A. The sheriff's department knew he was. I
20 met him. I talked to him. He was a self-admitted
21 one. He claimed to be one.

22 Q. And along the same lines with the
23 undercover purchases, what can you tell the jury
24 about any operation regarding someone named Chris
25 Garcia?

1 A. Chris Garcia is an SNM member that lived
2 on the streets in Albuquerque, was a pretty prolific
3 heroin and crack cocaine dealer for many years. He
4 was one of our instant and immediate targets in the
5 investigation, the proactive portion, the portion on
6 the streets. And we utilized, I think, three
7 separate undercover -- excuse me, three separate
8 informants and then eventually an undercover agent
9 to buy from Chris Garcia.

10 Q. Now, in each of those examples, were both
11 Mario Montoya and Chris Garcia charged with drug
12 offenses?

13 A. Yes.

14 Q. I'm going to ask you about another person
15 named Robert Lovato. How did you come across him,
16 if you did?

17 A. During I believe it was our phase 2
18 operation or take-down of this case, after many
19 months of investigations, we would take the case
20 down in phases. And during our second phase, I had
21 asked the Department of Corrections to once again
22 conduct parole searches on all SNM members on the
23 street. And this was contemporaneous with us
24 serving federal search warrants on other members and
25 arresting members. So while we're out doing that,

1 the Department of Corrections parole officers are
2 searching SNM parolees' houses. And the parole
3 officers located a firearm in Mr. Lovato's house.

4 Q. Under those circumstances, were those some
5 of the means you used to get into the gang or to
6 unveil criminal activity?

7 A. Yes.

8 Q. Was Mr. Lovato charged with anything?

9 A. He was charged with being a felon in
10 possession of a firearm.

11 Q. Does there come a point where undercover
12 operations only take you so far in an investigation?

13 A. Yes.

14 Q. And what techniques do you then employ
15 once you get to a certain point?

16 A. Well, some of the other techniques we can
17 employ, and did in this case, is wiretaps or phone
18 taps. We call them wire intercepts. We did a
19 series of those. And then we also do what the FBI
20 refer to as covert electronic surveillance, and
21 that's bugs, wires; those are the terms used. But
22 recording devices, hidden ones.

23 Q. As part of the use of these techniques,
24 did you get court orders beforehand to wiretap a
25 phone?

1 A. Yes. If I remember correctly we did eight
2 or nine wiretaps with, I think, eleven extensions.
3 And we did all of those through the Court. The
4 Court allows us to do those for 30 days at a time,
5 and that's why it necessitated so many extensions.
6 We would go back to the Court and request an
7 extension. In every wiretap in this case, we had
8 court orders to do that.

9 Q. And on whose phone would you be listening?
10 Give us examples, please.

11 A. Sure. Do you want examples by name, or --

12 Q. Yes.

13 A. Okay. For example, I believe you heard
14 about an informant named Eric Duran. He's one of
15 the individuals that I caused to have a phone inside
16 the prison that we had a wiretap on. All of the
17 wiretaps in this case were phones utilized by
18 informants who were talking to other SNM members,
19 either buying drugs or buying guns or talking about
20 murders or other SNM business, and I wanted those
21 incidents recorded. So I'd provide them with a
22 phone and get a court order to make sure we were
23 recording those phone calls and text messages.

24 Q. All right. You just mentioned having the
25 phone in prison. Are phones, cellphones, allowed in

1 prisons?

2 A. They are not.

3 Q. What steps did you have to take in order
4 to introduce a phone into a facility like that?

5 A. I had to get the permission of the deputy
6 secretary, who was the point of contact in this
7 operation. That was a gentleman by the name of Mark
8 Myers, who is now retired. Normally, we would
9 probably go to the cabinet secretary, but in this
10 case he's the victim, so we were not communicating
11 with him and not going to him for resources. So we
12 went to Mr. Myers. I got his permission. And then
13 we went through the steps of actually introducing
14 the phone into the facility, which was -- has its
15 own challenges.

16 Q. You mentioned an alleged victim. So if
17 Mr. Marcantel is an alleged victim in this case, why
18 would you not go to him for permission?

19 A. It's just not appropriate, in my mind. We
20 shouldn't. As a victim, he should not be involved
21 and was not involved in our investigation. We
22 immediately identified another point of contact, and
23 that was Deputy Secretary Myers.

24 Q. And were there times when permission would
25 also be sought of wardens of the facilities?

1 A. Yes. That did occur. I would not
2 communicate beyond Mr. Myers, but he would filter to
3 people within his office that needed to know.

4 Q. Generally speaking, I think you mentioned,
5 are cellphones contraband in the facility?

6 A. They are contraband.

7 Q. So under these circumstances, were they
8 permitted with the permission of the appropriate
9 officials?

10 A. Yes. Our phones that went in appeared to
11 be contraband to anyone that saw them. But we had
12 the required permissions to have them in there.

13 Q. And how many phones did you introduce into
14 facilities as part of this investigation?

15 A. Two.

16 Q. And did you follow the same procedures on
17 each occasion?

18 A. I did.

19 Q. Now, since this is a prison facility, was
20 this something that you made widely known to the
21 particular institution where the phone was? Or what
22 steps did you take to conceal that?

23 A. No, quite the opposite. We didn't want it
24 known, and we wanted it known to as few people as
25 possible. If I remember correctly, our legal

1 department actually had those that were aware of the
2 operation sign documentation that they would keep it
3 secret. At the time, we had convened a federal
4 grand jury and the folks that knew about our secret
5 operation in the prison had to sign forms saying
6 that they would keep that information confidential.

7 Q. Why did you want to reduce the number of
8 people who knew about the operation?

9 A. A prison environment is a tough place to
10 do any kind of undercover work. And unfortunately,
11 no disrespect to the Department of Corrections, but
12 we and the State Police arrest a lot of correctional
13 officers who bring phones or other contraband in or
14 have sex with inmates or other violations. And so
15 from my perspective, it's not a trustworthy
16 environment where we want to put that business out.

17 The other problem is the inmates. You
18 know, they're largely standing and sitting around
19 watching everything that moves around them in the
20 pods and around the facility, and having a lot of
21 extra movement is not a good thing in that kind of
22 investigation.

23 Q. Earlier you mentioned Mario Montoya and
24 the drug investigation regarding him. What happened
25 as a result of him being charged with drug offenses?

1 A. He was placed on federal pretrial
2 supervised release under the authority -- or excuse
3 me, not the authority; under the authority of the
4 Court but under the supervision of the FBI. People
5 that are awaiting trial are under some kind of
6 supervision, and in this case it was under our
7 supervision. He was subsequently relocated from New
8 Mexico to another state.

9 Q. When you released him under your
10 supervision, it was for what purpose?

11 A. To relocate him, keep him available for
12 court proceedings, for these proceedings, and to get
13 him out of New Mexico and away from the SNM.

14 Q. Did Mr. Montoya do work for the FBI in an
15 undercover capacity?

16 A. He did.

17 Q. And what can you tell us about the use of
18 any phone issued to him by the FBI?

19 A. I provided Mr. Montoya with a cellphone
20 that had the wiretap that I described earlier. Mr.
21 Montoya was utilized to purchase drugs. I can't
22 remember if he purchased any firearms. He
23 subsequently acquired one from Mr. Garcia. But he
24 was used to meet with other SNM members, and then to
25 make drug buys, controlled drug buys. He also was

1 later utilized as a -- furthering his undercover
2 capacity on the streets in the plot to kill
3 Marcantel and Santistevan.

4 Q. So you had him involved with that part of
5 the investigation?

6 A. I did.

7 Q. What types of phones did you issue to
8 Mr. Duran and Mr. Montoya?

9 A. They had flip phones, just kind of
10 old-school Walmart \$19.99 flip phones. Particularly
11 in the prison setting, because of the means in which
12 the phones are smuggled, it needed to be a smaller
13 phone that looked like it could be in a prison
14 environment.

15 Q. Okay. So you mentioned utilizing Eric
16 Duran, who was in prison; and Mr. Montoya out of
17 prison. What -- at some point in time do they cross
18 paths in this investigation?

19 A. They do.

20 Q. And how is it that they cross paths?

21 A. We had caused Mr. Baca to return from the
22 prison he was at in Colorado to New Mexico. Mr.
23 Baca was situated in a cell next to Mr. Duran. As
24 those two conversed, Mr. Baca was made aware of the
25 fact that Duran had a cellphone and Duran would make

1 calls for Baca. He couldn't hand the phone to him
2 because they were in separate cells, but there were
3 vents between the cells where Duran could put it on
4 speaker and hold it next to the vent and Baca would
5 talk into it.

6 During this process and the plot to murder
7 Gregg Marcantel, there was much discussion about who
8 was a good member on the streets that would actually
9 do this hit.

10 Now, I'm aware of this because Duran is
11 participating in this and there's phone calls. On
12 the other end of it, I'm aware of it because they're
13 reaching out to Chris Garcia, that SNM drug dealer
14 that I talked about earlier, and they're wanting
15 Chris to finance the operation and find somebody
16 that would do the operation.

17 Our concern was they find somebody that's
18 not working for us, and they could be successful.
19 So this is where we inserted Mario Montoya, and we
20 suggested -- on Mario's end, we're pushing him to
21 get in touch with Chris so that he presents himself,
22 shows that he's available to do this. And on Eric
23 Duran's end, I'm also pushing him to, say, suggest
24 Mario.

25 Now, Mario and Eric don't know they're

1 both working for the FBI, so both phones -- we're
2 kind of getting double recordings there, but that's
3 all right.

4 Q. That's what I was going to ask you, is
5 whether or not those two, as cooperators in this
6 investigation, knew that the other one was
7 cooperating.

8 A. They did not.

9 Q. Why did you not share that information
10 with each of them?

11 A. They didn't need to know that. The
12 informants just need to follow their instructions,
13 and they're not privy to the investigative
14 techniques that we are. They're not part of the
15 decision process.

16 Q. How did you come to know Eric Duran?

17 A. I started off by explaining how the
18 threats evolved and how I got involved in the case,
19 excuse me. And the informant that had provided the
20 letters to the STIU officials was Eric Duran. He
21 had at that time been an STIU informant, I think,
22 for a little while, and then he had been introduced
23 to some other FBI agents.

24 I didn't meet Mr. Duran till later that
25 summer because another FBI agent was working with

1 him. So I would just coordinate with that agent
2 what Duran's efforts were. But at that time I
3 hadn't given him a phone yet. I hadn't given him a
4 recording device yet. I was getting intelligence
5 updates from him.

6 Q. Now, you mentioned meeting Mr. Duran in
7 the summer. What year?

8 A. I think it was August of 2015.

9 Q. Now, for what purpose did you come to know
10 Mr. Duran and -- instead of the other agent you --
11 agent or agents you mentioned that he was working
12 with?

13 A. There were a couple of factors. At that
14 point we're -- you know, we're four to five months
15 into the investigation. It was largely -- it
16 started out largely as proactive operations on the
17 street, because we didn't know how big the threat
18 was, and I didn't know the SNM. So my first
19 objective was: Let's hit the streets. The prison
20 officials can tell us who is there. Let's find out
21 what threats are on the street. Let's look for
22 vulnerabilities in these guys. How are we going to
23 get into them? Where do they make their mistakes?
24 Let's study them a little bit.

25 So three or four months into this, we're

1 now in the full swing of this investigation. It's
2 picked up momentum. And at that point I think it's
3 safe to say our task force took over the management
4 of all SNM informants in the state. If a police
5 department had one, another federal agency had one,
6 we would push to manage that. And so that is
7 largely how that other agent said, "Okay, here's
8 Eric Duran," and I sat down and met him for the
9 first time in August.

10 Q. So you told the members of the jury that
11 you first received information about a threat in
12 March of 2015; that you meet Eric Duran in August of
13 2015. And when is it that you make arrangements to
14 return Mr. Baca to New Mexico?

15 A. I believe it was October, two months
16 later.

17 Q. Okay. You mentioned the name Mr. Baca.
18 Do you see him in court today?

19 A. I do.

20 Q. Please point him out and identify him for
21 us.

22 A. He's seated against the back wall. He has
23 a shaved head, a dark-colored suit, and a
24 brownish-colored tie.

25 Q. Why, as part of this investigation, did

1 you try to have Mr. Baca moved back to New Mexico?

2 A. Well, as we dug deeper into the threats
3 and what was behind them, as we dug deeper into the
4 SNM, we learned a couple of things that pertained to
5 that movement. One is that Mr. Baca was a leader,
6 and that Mr. Baca had -- the idea to hit corrections
7 officials, according to other members of the gang,
8 had originated with Mr. Baca; that he wanted, I
9 think his words were, "to put the SNM on the map"
10 with the other prison gangs around the country.

11 MR. LOWRY: I'm going to have to object.
12 This is hearsay.

13 THE COURT: Well, we probably don't need
14 to be eliciting it from him, so sustained.

15 MR. CASTELLANO: Understood, Your Honor.
16 BY MR. CASTELLANO:

17 Q. So as part of the investigation, did it
18 become important to move Mr. Baca back to further
19 the investigation?

20 A. Yes.

21 Q. Where was he before he was returned to New
22 Mexico?

23 A. He was in Florence, Colorado, at a federal
24 facility. Not there on federal charges; just an
25 interstate compact, there as a state inmate.

1 Q. So is it your understanding through the
2 compact that sometimes states exchange prisoners
3 with each other?

4 A. Yes.

5 Q. So just to be clear, Mr. Baca is in
6 Colorado on exchange, not on a new crime committed
7 in Colorado?

8 A. Correct.

9 Q. Were you aware of whether Mr. Baca was
10 fighting his transfer out of state and wanted to
11 return to the state?

12 MR. LOWRY: Objection, leading.

13 THE COURT: Overruled.

14 A. Yes, he was fighting it. The paperwork
15 that I reviewed indicated that there was a process.
16 He was fighting it and --

17 MR. LOWRY: Objection, Your Honor. This
18 is hearsay.

19 THE COURT: Lay a foundation as to how he
20 got the information.

21 BY MR. CASTELLANO:

22 Q. Let me just ask you this: From the
23 investigation, was it your understanding that Mr.
24 Baca wanted to return to New Mexico?

25 A. Yes.

1 Q. So as part of this investigation, what did
2 you make it look like when he returned to New
3 Mexico?

4 A. That his wish was granted.

5 Q. Okay. So if he's here in approximately
6 October of 2015, what do you do to further the
7 investigation focusing on Mr. Baca?

8 A. I asked that the Department of Corrections
9 house him next to Eric Duran, because Duran had a
10 recording device and he had a cellphone. The
11 Department of Corrections did that. At the time,
12 Duran and several over members of the SNM were
13 housed at the North facility, the Level 6 facility.
14 When Mr. Baca arrived back to New Mexico, that's
15 where he went, and he landed in the cell next to
16 Mr. Duran.

17 Q. And just to remind the members of the
18 jury, the North facility is the one in Santa Fe?

19 A. Yes, sir.

20 Q. All right. Tell us how the operation
21 proceeds once Mr. Duran, with a phone, and Mr. Baca
22 are next to each other?

23 A. Mr. Duran started recording certain
24 statements Mr. Baca made. Mr. Baca would
25 participate in and make phone calls through

1 Mr. Duran's cellphone. And at the point in which
2 Mr. Baca wanted to communicate the mechanics of the
3 hit on Gregg Marcantel, phone calls were made to
4 Chris Garcia, a member who was on the streets, the
5 one that we'd been buying drugs from.

6 Baca asked --

7 MR. LOWRY: Objection, Your Honor,
8 hearsay.

9 THE COURT: Are you trying to elicit this
10 out-of-court statement?

11 MR. CASTELLANO: No, Your Honor.

12 THE COURT: All right. Let's move on.

13 BY MR. CASTELLANO:

14 Q. So I won't worry about statements at this
15 point. What I'm going to ask you is whether or not
16 there were recordings made from the interactions
17 from Mr. Duran and Mr. Baca.

18 A. There were a lot of recordings made.

19 Q. And you also mentioned earlier that by
20 this time, Mr. Duran has the phone and then Mr.
21 Montoya has a phone on the streets. Is this the
22 part of investigation where they come together and
23 you have a phone conversation from in the prison and
24 outside of the prison being recorded?

25 A. Yes.

1 Q. So what other types of crimes did you
2 investigate as part of this larger investigation?

3 A. Drug dealing, firearms trafficking,
4 firearms possession, use of a firearm in furtherance
5 of drug trafficking or in a crime of violence,
6 carjacking, Hobbs Act armed robbery, intimidation of
7 witnesses, and introducing contraband into a jail or
8 prison facility.

9 Q. Now, eventually, as this investigation
10 progresses, does there come a point where you, in
11 connection with the U.S. Attorney's Office, make
12 charging decisions and present a case, the case to a
13 grand jury?

14 A. Yes.

15 Q. And approximately when did that happen?

16 A. Around the 1st or 2nd of December 2015.

17 Q. And did you name that part of the process
18 or the investigation?

19 A. Phase 1.

20 Q. And since you have a phase 1, did you have
21 in mind later on having later phases as part of this
22 investigation?

23 A. Yes, sir.

24 Q. So as part of phase 1, tell us what
25 happened once the case was presented to the grand

1 jury. What happened with the investigation?

2 A. The indictment was presented to the grand
3 jury, arrest warrants were issued. Following that,
4 we spent a couple of days conducting site
5 assessments of where all the targets or the people
6 to be arrested were. We brought in extra resources
7 from the FBI, SWAT teams, helicopters, aircraft, the
8 stuff that we need to conduct simultaneous takedown
9 around the state, if you will.

10 And so we did that, if my memory serves me
11 correct, December 3, 2015, very early in the
12 morning. In fact, we started at 4:00 a.m., I
13 believe. Some of the search warrants that I wrote,
14 we were granted permission from the Court to serve
15 them at that time in the morning.

16 So we served dozens of search and arrest
17 warrants. At the same time, the New Mexico
18 Corrections Department locked down five prison
19 facilities around the state that housed SNM members
20 and their internal -- I believe they call it --
21 SCRT, their Special Corrections Response Team,
22 extracted the SNM members and searched their cells.
23 And if my memory serves me, the Department of
24 Corrections Probation and Parole conducted about 45
25 parole searches around the state of SNM members.

1 Q. Now, you said the prison facilities are
2 locked down. What's your understanding of what a
3 lockdown is at a facility?

4 A. There is no movement by the inmates.
5 Everyone stays in their cell, and all programming
6 and movement is suspended until the lockdown is
7 lifted.

8 Q. And if you recall, which facilities were
9 involved with the lockdown?

10 A. PNM up in Santa Fe; Southern, down here in
11 Las Cruces; Western, out in Grants, New Mexico;
12 Eastern -- that location escapes me -- and Central,
13 which is in Los Lunas, New Mexico.

14 Q. Is Central the prison you see when you're
15 driving between Albuquerque and Las Cruces on the
16 side of the road?

17 A. Yes, it would be on your right if you're
18 going northbound. So it's located east of the
19 freeway.

20 Q. And as part of that process, what happened
21 to individuals who were arrested on that particular
22 day of the takedown?

23 A. We set up what I'll call a prisoner
24 processing center. We took over a state building in
25 downtown Albuquerque. They call it the Gold

1 building. It's a New Mexico Corrections Department
2 building. And because there were arrests taking
3 place all over the state, as well as out of state,
4 actually -- there were a couple of operations -- as
5 arrestees were arrested, they were brought to the
6 central processing area so that we could fully
7 identify them, fingerprint them, photograph them,
8 and then read them their rights and attempt to
9 interview them.

10 Q. And you mentioned photographing people.
11 What was the purpose of photographs?

12 A. Twofold. I'd written a search warrant
13 to -- I'd requested the Court's permission to
14 photograph them, basically their entire body minus
15 genitalia. That was to capture their tattoos, both
16 street gang tattoos and prison gang tattoos. The
17 search warrant also authorized, I forgot to mention
18 earlier, the collection of DNA, which is a protocol
19 we have to do in the FBI when we arrest somebody;
20 and then to interview them.

21 Q. I'm going to begin with the people that
22 are on trial here, and I'm going to show you some
23 photographs. I'll begin with Government's Exhibit
24 548, 549, 550, 551, 552.

25 MR. LOWRY: Your Honor, may we approach

1 real quickly?

2 THE COURT: You may.

3 MR. CASTELLANO: Those will be 549 through
4 560.

5 (The following proceedings were held at
6 the bench.)

7 THE COURT: So you're going 548 through
8 560. There are no gaps there?

9 MR. CASTELLANO: That's correct, Your
10 Honor.

11 THE COURT: Mr. Lowry.

12 MR. LOWRY: Your Honor, I should have
13 talked to Mr. Castellano earlier about working out a
14 protocol. If he'd read off the Bates numbers, if
15 he's not going to show them to me in the court.
16 They disclosed all the exhibits. We're just going
17 to work on that level. It would be nice to get a
18 heads-up.

19 THE COURT: He did yesterday. He told you
20 what exhibits the exhibits were going to be, and
21 offered to show them to you yesterday.

22 MR. LOWRY: We looked at them this
23 morning. We don't mind the full-body shots. I'm
24 not sure how many -- 12 photographs are necessary of
25 Mr. Baca. It's overkill.

1 MR. CASTELLANO: These are actually Mr.
2 Sanchez.

3 THE COURT: There's a whole bunch there.
4 It's not just Mr. Baca.

5 MR. LOWRY: Fair enough. I don't have
6 standing to --

7 THE COURT: Well, it's all four
8 defendants; right?

9 MR. CASTELLANO: That series is only Mr.
10 Sanchez, and there is a series for each of these
11 defendants.

12 MR. LOWRY: I guess I'm objecting just to
13 the scope, the volume of the --

14 THE COURT: Well, there's body shots,
15 there's close-ups, and everything else here. I
16 think it's coming in.

17 (The following proceedings were held in
18 open court.)

19 THE COURT: All right. Mr. Castellano.
20 BY MR. CASTELLANO:

21 Q. Agent Acee, I'm handing you what's been
22 marked for identification Government's Exhibits 548
23 through 560. Please look at these exhibits and tell
24 us if you recognize each of those exhibits.

25 A. I do.

1 Q. Are those a fair and accurate depiction of
2 the photographs taken on December 3 of 2015?

3 A. They are.

4 Q. And those are photographs of who?

5 A. These are photographs of Daniel Sanchez.

6 MR. CASTELLANO: Your Honor, I move the
7 admission of Government's Exhibits 548 through 560.

8 THE COURT: Any objection, Ms. Jacks?

9 MS. JACKS: No objection, Your Honor.

10 THE COURT: All right. Government's
11 Exhibits 548 through 560 will be admitted into
12 evidence.

13 (Government Exhibits 548 through 560
14 admitted.)

15 MR. CASTELLANO: With the Court's
16 permission, I'd like to publish them to the jury.

17 THE COURT: You may.

18 BY MR. CASTELLANO:

19 Q. Beginning with 548 -- and we'll just go
20 sequentially through them. Government's 548, there
21 is a name and date of birth redacted and the date
22 12/3 of 2015. So is this consistent with what you
23 were telling us about doing the roundup and the mass
24 arrests in December of 2015?

25 A. Yes.

1 Q. The name Daniel Sanchez -- is that the
2 person you know as Daniel Sanchez from this case?

3 A. It is.

4 Q. And do you see Daniel Sanchez in the
5 courtroom?

6 A. Yes, sir.

7 Q. Would you please point him out and
8 identify him for us?

9 A. He's seated to the left of defense
10 counsel, left side of the courtroom, looks like a
11 blue suit and bluish-grey shirt with a blue tie.

12 MR. CASTELLANO: Let the record reflect
13 that Agent Acee has previously identified Mr. Baca,
14 and has now identified Mr. Sanchez.

15 THE COURT: The record will so reflect.
16 BY MR. CASTELLANO:

17 Q. Turning to Exhibit 549, I want to ask you
18 about any interpretation or meaning of these
19 tattoos, Agent Acee. But I want to ask you, as you
20 took photographs or had someone photograph the
21 people on this occasion, whether you saw common
22 trends in some of the tattoos.

23 A. Okay.

24 Q. So looking at Exhibit 549, do you see
25 anything there or similar that you've seen on other

1 people arrested?

2 A. Yes.

3 Q. Okay. Please start with the first one you
4 see.

5 A. As you look at the photo, to the left side
6 of the photo on Mr. Sanchez's right forearm, lower
7 bicep area, the letter N, and the same location on
8 the opposite arm, you see the M for New Mexico.

9 Q. Turn to Exhibit 550. Is that focusing on
10 the hands you told us about previously?

11 A. Yes, sir.

12 Q. Exhibit 551. Same question. Are they --
13 are you just focusing primarily on the M there?

14 A. Yes.

15 Q. Exhibit 552, I want to draw your
16 attention -- we may have another photograph in a
17 second -- the left elbow shown in that picture?

18 A. Yes. There's two things with that. The
19 Zia that I think we'll see in a subsequent picture,
20 and then up toward the top of the photo, that's
21 depicting his left shoulder, kind of the front of
22 his shoulder, the female with the sombrero. That's
23 often referred to as a chata, and that's a common
24 tattoo that we see.

25 Q. Turning to Exhibit 553, you mentioned a

1 Zia symbol earlier. Do you see it better in this
2 photograph?

3 A. Yes. That depicts Mr. Sanchez's left
4 elbow.

5 Q. Next is Exhibit 554. What do you see
6 there that you may have seen on other people
7 arrested in this case?

8 A. You'll notice now in this photo you can
9 see on both elbows the Zia symbol, and then
10 prominently in the center of his back the chata
11 again.

12 Q. Do you see his name anywhere up there?

13 A. I do. His name starts at the upper left
14 portion of his back and runs all the way across his
15 back to his right shoulder. He also has his
16 hometown tattooed on the back of his neck. It says
17 "Belen."

18 Q. Belen, of what state?

19 A. New Mexico.

20 Q. Turning to Exhibit 555, anything
21 additional you see there?

22 A. No.

23 Q. Now turning to Exhibit 556?

24 A. This photo on Mr. Sanchez' right knee,
25 there is another Zia symbol, and on his left knee I

1 believe is the outline of the state of New Mexico,
2 which I think we'll see in a subsequent photo.

3 Q. Exhibit 557?

4 A. In this photo it's of a man wearing a head
5 band behind prison bars.

6 Q. Next is Exhibit 558.

7 A. This is the one I described just a few
8 seconds ago, the outline of the state of New Mexico
9 on his knee and it says "Valencia County," which is
10 in New Mexico.

11 Q. Turn your attention next to 559.

12 A. In this photo it has the defendant's name,
13 it says, the left side of his leg.

14 Q. Once again, the name "Sanchez" is on
15 there?

16 A. Yes, sir.

17 Q. And finally Exhibit 560.

18 A. It's an overall photo of Mr. Sanchez at
19 the end of the photo session.

20 Q. Earlier, to begin this investigation, we
21 talked about potential threats against Secretary
22 Marcantel as well as the STIU head, Mr. Santistevan.
23 On this occasion, we now have a photograph of Mr.
24 Sanchez. What can you tell the members of the jury,
25 why he was arrested on this occasion? In connection

1 with which charges, I should say.

2 A. Mr. Sanchez was arrested for a violation
3 of violent crime in aid of racketeering,
4 specifically for the murder of Javier Molina that
5 occurred in 2014 down here in Las Cruces, at the
6 Southern New Mexico Correctional Facility.

7 Q. Now, related to the Javier Molina
8 investigation, you mentioned earlier that sometimes
9 you adopt cases and take them from the state system
10 into the federal system. Do you recall that?

11 A. Yes.

12 Q. What can you tell us about the Javier
13 Molina murder and whether or not that was a similar
14 process?

15 A. It was. In that case we weren't adopting
16 a simple drug or firearm charge; we're actually
17 adopting a murder, because we had evidence that fell
18 within the federal racketeering guidelines.

19 Q. And when the Javier Molina murder was
20 first charged, was it charged at the state level?

21 A. It was.

22 Q. Do you remember how many defendants were
23 initially charged in the Molina murder?

24 A. I think four.

25 Q. To the best of your recollection, who were

1 those people?

2 A. Jerry Montoya, Jerry Armenta, and Mario
3 Rodriguez. I hesitated there because I thought
4 there was some discussion of a fourth defendant, but
5 it may very well have just been those three.

6 Q. And if you can recall, was Mr. Rodriguez
7 charged with the murder, or was he charged with
8 something else in connection with that murder?

9 A. I believe he was charged with tampering
10 with evidence.

11 Q. As a result of the investigation, then,
12 were additional people charged in connection with
13 that murder?

14 A. Yes.

15 Q. Was Mr. Sanchez one of those people?

16 A. He was.

17 Q. I have another set of photographs here
18 beginning with Exhibits 495, 496, 497, 498, 499,
19 500, 501, 502, 504, 505, 506 and 507.

20 MR. CASTELLANO: May I approach the
21 witness, Your Honor?

22 THE COURT: You may.

23 BY MR. CASTELLANO:

24 Q. Agent Acee, same question. I'll ask you
25 to look at those photographs and see if you

1 recognize them.

2 A. Yes, sir, I do.

3 Q. How do you recognize them?

4 A. These are photos of Mr. Baca.

5 Q. It's a fair and accurate depiction of
6 photos taken on December 3 of 2015?

7 A. Yes, they are.

8 MR. CASTELLANO: Your Honor, I move the
9 admission of those exhibits.

10 THE COURT: Any objection, or anything?

11 MR. LOWRY: No, Your Honor.

12 THE COURT: And I believe from 495 to 507,
13 the only one that there was a gap was 503; is that
14 correct?

15 MR. CASTELLANO: There was a gap, Your
16 Honor. Let me just confirm that for the Court.

17 THE COURT: I don't think there was 503.
18 So 495 to 507 will be admitted, except there will be
19 no 503; is that correct?

20 MR. CASTELLANO: I agree, Your Honor. And
21 with the Court's permission, I'll also publish these
22 to the jury beginning with Exhibit 495.

23 THE COURT: You may.

24 (Government Exhibits 495 to 502 and 504 to
25 507 admitted.)

1 BY MR. CASTELLANO:

2 Q. Agent Acee, consistent with what you've
3 said, there is a name up there and a date of
4 December 3, 2015. Is this the same situation we had
5 with Mr. Sanchez earlier?

6 A. Yes.

7 Q. And turn to the next exhibit. What are we
8 looking at in Exhibit 496?

9 A. We're looking at a side profile of Mr.
10 Baca's head and neck area, upper shoulders.

11 Q. And what can you tell us about what's near
12 his left eye?

13 A. It's a Zia symbol with an S in the center
14 of it.

15 Q. Turning to Exhibit 497, what else do you
16 see in addition in this photograph?

17 A. In this photograph it depicts Mr. Baca's
18 neck and upper chest area with several tattoos. The
19 one in the center of his -- let me back up. Excuse
20 me. On his neck, it says his name, "Baca." Below
21 that it says "Duke City," which is often referred to
22 as Albuquerque. And just underneath that you can
23 start to see what I believe is the Hyatt building.
24 And we'll see the outline of some of the buildings
25 in Albuquerque. On his left shoulder is currency,

1 looks like a \$1,000 bill, and then some other
2 tattoos.

3 Q. Let's get another view in Exhibit 498.
4 You mentioned the name Baca. Can you see it better
5 in this exhibit?

6 A. Yes, sir.

7 Q. As well as the words "Duke City"?

8 A. Yes.

9 Q. And what about the Hyatt building?

10 A. It's in the center of his chest in this
11 photo. To the left side of the photo, it looks like
12 someone's ball cap or possibly a hoodie, but you'll
13 see on the front of it there is an S, as well.

14 Q. And in your investigation of the SNM
15 prison gang, have you sometimes known them to be
16 called S for short?

17 A. Yes.

18 Q. Let me turn your attention to 499.

19 A. This is his right shoulder and it's a
20 better depiction of that ball cap, or perhaps it's a
21 hoodie, but it's a hat of some sort. The person is
22 wearing a ski mask and holding a pistol with smoke
23 coming out of the muzzle.

24 Q. Let's take a look at Exhibit 500. In
25 addition to what you've already testified to, what

1 are we looking at in what I refer to as his torso or
2 his stomach area?

3 A. A tattoo -- well, there is a tattoo in the
4 center, where his solar plexus would be, of a prison
5 tower. Below that it says "Nuevo Mexico Sindicato."

6 Q. Turning next to Exhibit 501. You
7 mentioned a prison tower. Can you see it a little
8 better in this picture?

9 A. Yes. It's towards the top of the photo.

10 Q. If you can go ahead and touch the screen,
11 you can probably circle that from the witness stand.

12 A. (Witness complies.)

13 Q. Anything else you notice from this
14 exhibit?

15 A. I previously mentioned the Nuevo Mexico
16 Sindicato, as I indicated on the screen.

17 MR. CASTELLANO: For the record, the
18 witness has underlined the words "Nuevo Mexico" and
19 "Sindicato" and circled the tower on the top of that
20 photograph.

21 Q. Exhibit 502 of the -- I want to draw your
22 attention to the back of the arm there and see if
23 you can tell us what that is. If it's easier, I can
24 show you the -- we're showing this up on the screen.
25 I can show you a physical copy of the exhibit, if

1 that helps.

2 A. That might help. There is a glare on here
3 I'm having trouble seeing.

4 MR. CASTELLANO: May I approach, Your
5 Honor?

6 THE COURT: You may.

7 A. So in this photo, there are several --
8 this is depicting Mr. Baca's right arm and his
9 profile looking at the right side of his body.
10 There are several tattoos, some of which I've
11 already described.

12 BY MR. CASTELLANO:

13 Q. Turning to Exhibit 504, can you tell the
14 members of the jury if this is a common theme you've
15 seen in some of the people you've arrested in this
16 case?

17 A. Yes.

18 Q. And for the record, what are we looking at
19 in this exhibit?

20 A. We're looking at the back of Mr. Baca's
21 upper back and shoulders. It's a Mayan or an Aztec
22 artwork. This is a theme that some of the members
23 of the SNM have.

24 Q. Turning to Exhibit 505.

25 A. This is a closer-up picture of what I just

1 described, and this is on the upper right side, rear
2 of Mr. Baca's shoulder.

3 Q. Now looking at Exhibit 506.

4 A. This is a photo of Mr. Baca's right hand
5 with some tattoos.

6 Q. If you can tell, do you know what that --
7 on his left thumb, on Exhibit 506, what that is or
8 what it looks like?

9 A. It's -- there are different names for it,
10 but I'll describe the photo first. It's a man in a
11 hat wearing sunglasses with a handlebar-style
12 mustache. And it's sometimes -- I've heard it
13 called, like, a -- I'm drawing a blank on the name.
14 I'm sorry.

15 Q. That's okay. Finally, Exhibit 507.

16 A. This is similar to a photo we looked at
17 earlier. This is just a profile of Mr. Baca with
18 his shirt off, showing the front of his body with
19 his tattoos.

20 Q. The same question as earlier. In the
21 state case -- was Mr. Baca charged in the state
22 case?

23 A. He was.

24 Q. In the state case?

25 A. Excuse me, no. Just in the federal case.

1 Q. So was he also an addition to the Molina
2 murder as a part of your investigation?

3 A. Yes.

4 Q. Next, I'm going to draw your attention to
5 another set of photographs. Those numbers are
6 606 -- let me see if there are any gaps here. These
7 are all sequential. These are Exhibits 606 through
8 613.

9 MR. CASTELLANO: May I approach, Your
10 Honor?

11 THE COURT: You may.

12 BY MR. CASTELLANO:

13 Q. Agent Acee, let me show you Exhibits 606
14 through 618. Do you recognize each of those
15 photographs?

16 A. I do.

17 Q. And they are photographs of who?

18 A. Jerry Armenta.

19 Q. Are they a fair and accurate depiction of
20 the photos taken on December 3, 2015?

21 A. Yes, sir.

22 MR. CASTELLANO: Your Honor, I move the
23 admission of Government's Exhibits 608 through 618.

24 THE COURT: Earlier I thought you said
25 606.

1 MR. CASTELLANO: You are correct, Your
2 Honor. 606.

3 THE COURT: Any objection from the
4 Defendants? Not hearing any, Government's Exhibits
5 606 through 618 inclusive will be admitted into
6 evidence.

7 (Government Exhibits 606 through 618
8 admitted.)

9 BY MR. CASTELLANO:

10 Q. I'd like to begin looking at 606. I think
11 you mentioned the name, but who is this?

12 A. Jerry Armenta.

13 Q. And was Jerry Armenta initially charged in
14 the Molina murder when it was a state case?

15 A. Yes.

16 Q. Did you bring him into the federal case?

17 A. Yes.

18 Q. Next Exhibit 607. What are we looking at
19 there?

20 A. We're looking at Mr. Armenta's lower
21 chest, upper stomach area. On his stomach he has a
22 street gang tattoo, NSL, which I believe would be
23 North Side Locos. Below that you'll see the number
24 114 with the percent symbol.

25 Q. Let's turn to 608. I think it's a better

1 picture of that tattoo there. Can you see that
2 better?

3 A. Yes.

4 Q. Okay. Tell us about that tattoo first.

5 A. So even more clearly you see it here, NSL.
6 It says "114 percent," and below his belly button
7 says "Norteno." These are street gang tattoos that
8 pertain to -- here, the 114 percent is he's claiming
9 pride in being a Norteno. I don't want to give you
10 a long history lesson on California gangs, but this
11 is an offshoot of a gang from California.

12 Q. Let me ask you this. Just generally in
13 this case, when you came across somebody who you
14 identified as an SNM Gang member, were you also
15 aware whether or not they previously belonged to a
16 street gang?

17 A. Yes. That was one of the first questions
18 I'd find out from them.

19 Q. Let's turn to 609. Anything significant
20 in the left arm depicted in this photograph?

21 A. It's a scheme -- a common theme that we're
22 going to see over and over again: Naked women, guns
23 and money. And that's what's depicted on the left
24 arm of Mr. Armenta.

25 Q. And let's look at Exhibit 610.

1 A. In this one there's -- there are a couple
2 significant tattoos. We're looking at his right
3 arm. And to the upper left here, you see a prison
4 tower. Below that there are scrolls. The first one
5 says 01, 02 -- I think we have 05. These scrolls
6 are years that the person wearing them fell or those
7 were years they did time in prison.

8 Q. Exhibit 611?

9 A. This photo depicts the back of Mr.
10 Armenta's neck, and his moniker is spelled across
11 it, which is Creeper.

12 Q. During the course of the investigation,
13 did you come to know Mr. Armenta as Creeper?

14 A. Yes.

15 Q. Exhibit 612?

16 A. This photo depicts the back side of Mr.
17 Armenta's right ear. It looks like the tattoo says,
18 "Disavowed."

19 Q. And do you know anything about that
20 tattoo?

21 A. I don't.

22 Q. Looking at Exhibit 613.

23 A. This is Mr. Armenta's left ear, and it
24 says, "Misunderstood."

25 Q. And have you met Mr. Armenta?

1 A. I have.

2 Q. Have you sat down and interviewed him or
3 debriefed him?

4 A. Yes.

5 Q. Let's take a look at Exhibit 614.

6 A. This is the top of Mr. Armenta's head.
7 His head is shaved. You'll see the outline of the
8 state of New Mexico and the Zia symbol.

9 Q. Once again, are things like NM or the
10 state of New Mexico or the Zia symbol a common theme
11 that you have noticed in this case?

12 A. Yes.

13 Q. Again, Exhibit 615. What do we see in
14 this photograph?

15 A. This is Mr. Armenta's right hand. He's
16 spreading his fingers, and it looks like his right
17 middle finger -- I talked about before NSL 14, a
18 street gang. It looks like he has some other
19 tattoos that are either too light or he either
20 shaded over in the circle there.

21 Q. All right. Looking next to Exhibit 616.

22 A. This is Mr. Armenta's right leg. You see
23 the Zia symbol on his knee. Below that, another
24 reference to a street gang. N-O-R, for north, and
25 then you can see the 14 at the bottom.

1 Q. Exhibit 617?

2 A. This is Mr. Armenta's left leg.

3 Q. If the other leg said "north," what does
4 this leg show?

5 A. It spells out side, S-I-D-E.

6 Q. So when you put the two legs together,
7 what do we get?

8 A. North side.

9 Q. And finally, Exhibit 618.

10 A. So this depicts Mr. Armenta's stomach and
11 the tattoos that I talked about before, NSL and 14
12 percent, Norteno.

13 Q. I'm going to turn your attention next to
14 another set of photographs. These photographs are
15 numbered 596 through 605.

16 MR. CASTELLANO: May I approach?

17 MS. JACKS: No objection.

18 THE COURT: Any objection from any of the
19 Defendants?

20 MR. VILLA: No, Your Honor.

21 THE COURT: I assume you're going to move
22 their admission?

23 MR. CASTELLANO: Yes, sir.

24 THE COURT: All right. Exhibits 596
25 through 605, with no gaps, inclusive, will be

1 admitted into evidence.

2 (Government Exhibits 596 through 605
3 admitted.)

4 BY MR. CASTELLANO:

5 Q. Agent Acee, let's look at Exhibit 596.
6 Who is that?

7 A. Jerry Montoya.

8 Q. And do you know him from this
9 investigation?

10 A. I do.

11 Q. And have you had a chance to sit down and
12 interview him or debrief him?

13 A. Yes.

14 Q. Was he one of the original defendants from
15 the state case involving Mr. Molina?

16 A. Yes.

17 Q. Let's turn to the next exhibit. 597.

18 A. This photo depicts Mr. Montoya with his
19 shirt off. He has the initials JR on his chest,
20 which is a nickname he goes by. His father had the
21 same name, so he's a junior.

22 Q. From that photograph, are those boxing
23 gloves?

24 A. Yes.

25 Q. What other names do you know Mr. Montoya

1 by?

2 A. Plaz, P-L-A-Z, or double Z; Plazi, or JR.

3 Q. Turning next to 598.

4 A. This photo is the forearm of Mr. Montoya
5 at the top. There's a couple of things I'll note.
6 The first is a peacock. Below that, the name of his
7 street gang, San Jo, or San Jose.

8 Q. So you mentioned the term or the words San
9 Jo. Is that short for San Jose?

10 A. Yes, sir.

11 Q. What do you know about that gang or that
12 area?

13 A. That's a neighborhood in Albuquerque.
14 It's a street gang that's been around for a long
15 time.

16 Q. Let's turn to the next exhibit, please.
17 599. Anything significant you see in this
18 photograph?

19 A. No.

20 Q. The next, Exhibit 600.

21 A. This is the back side of his forearm. He
22 has "east."

23 Q. If he has "east," let's turn then to 601.

24 A. On his right forearm he has "side."

25 Q. Once again, when you put the two together

1 you get "east side"?

2 A. Yes. The San Jose street gang is split
3 into two: An east side and a west side.

4 Q. Turning to Exhibit 602.

5 A. This is Mr. Montoya's back, his shirt off.
6 At the base of his neck he has "San Jose." He has
7 the same thing in letters across his lower back, and
8 then we can start to see the Zia symbol here with an
9 S in it.

10 Q. For the record, you circled the right side
11 of his neck; is that correct?

12 A. Yes.

13 Q. Let's go ahead and turn, then, to Exhibit
14 603.

15 A. That's a closer-up photo. You see the Zia
16 symbol with the S shaded out inside.

17 Q. The same thing? This is a common theme
18 you've seen?

19 A. Yes, sir.

20 Q. 604.

21 A. It's the same photo, just a little closer
22 up.

23 Q. And 605?

24 A. This would be Mr. Montoya's out photo,
25 we'll call it, after all the photos were taken.

1 Q. Showing us a smile?

2 A. Seems like he's always smiling.

3 Q. And so for someone like Mr. Montoya -- and
4 when you talked about arresting people, where was he
5 when you grabbed him and took him from the State and
6 brought him to federal court?

7 A. He was one of the people arrested at the
8 facility up in Santa Fe. So he was up at PNM. He
9 was extracted during the lockdown, and then
10 transported down to our processing center in
11 Albuquerque.

12 Q. I'm going to show you another set of
13 photographs beginning with 586. These are Exhibits
14 586 through 595.

15 MS. JACKS: Again, Your Honor, there is no
16 objection.

17 THE COURT: Any objection from any of the
18 Defendants?

19 MR. VILLA: No objection.

20 MR. BALL: No, Your Honor.

21 THE COURT: All right. We'll admit
22 Government's Exhibits 586 through 595, without gaps,
23 inclusive.

24 (Government Exhibits 586 through 595
25 admitted.)

1 BY MR. CASTELLANO:

2 Q. Let's begin with 586, please. Who is
3 that?

4 A. Mario Rodriguez.

5 Q. Do you know him by any other names from
6 this investigation?

7 A. He uses the moniker Blue.

8 Q. The same thing. This has a date on here
9 of December 3, 2015. Is this the same date as the
10 other people arrested?

11 A. Yes.

12 THE COURT: Mr. Castellano, would this be
13 a good time for us to take our lunch break before
14 you get too far into Mr. Rodriguez's pictures?

15 MR. CASTELLANO: Yes, sir.

16 THE COURT: All right. Since we're going
17 to be taking our first lunch break during the trial,
18 I'm going to remind you of a few things that are
19 especially important. Until the trial is completed,
20 you're not to discuss this case with anyone, whether
21 it's members of your family, people involved in the
22 trial, or anyone else. And that includes your
23 fellow jurors. If anyone approaches and tries to
24 discuss the trial with you, please let me know about
25 it immediately.

1 Also, you must not read or listen to any
2 news reports of the trial. Again, don't get on the
3 internet and do any research for purposes of this
4 case. And finally, remember that you must not talk
5 about anything with any person who is involved in
6 the trial, even if it doesn't have anything to do
7 with the trial.

8 If you need to speak with me, simply give
9 a note to one of the court security officers or Ms.
10 Standridge. Again, I'm going to repeat these today
11 and we'll start dropping them off tomorrow. But do
12 keep them in mind each time we take a break.

13 All right. We'll be in recess for about
14 an hour so have a good lunch. All rise.

15 (The jury left the courtroom.)

16 THE COURT: Anything before we take our
17 lunch break? All right. Have a good lunch. See
18 you in about an hour.

19 (Court was in recess.)

20 THE COURT: All right. Let's go on the
21 record before we bring the jury in.

22 Ms. Fox-Young, I think you had something
23 that you wanted to try to raise before we brought
24 the jury in?

25 MS. FOX-YOUNG: Thank you, Your Honor.

1 THE COURT: Ms. Fox-Young.

2 MS. FOX-YOUNG: Your Honor, in the last
3 hour I had the opportunity to briefly review the
4 Government's response to the motion that Mr. Lowry
5 filed to strike witnesses. I don't know the
6 document number. But all Defendants joined. The
7 Government's response is Document 172, I believe.

8 THE COURT: Hold on just a second. Are
9 they ready?

10 THE CLERK: Yes.

11 THE COURT: Well, you said it could wait.
12 Can I take you up on that?

13 MS. FOX-YOUNG: It can wait.

14 THE COURT: All right. You can talk to me
15 while she's getting the jury. I thought they were
16 ready. Not yet.

17 MS. FOX-YOUNG: So the Government's
18 response, Document 1725, says on page 6, "The U.S.
19 has disclosed Brady and Giglio material as timely as
20 possible. The latest information that was provided
21 was not in the custody of the Government prior to
22 production, and were provided as timely as
23 possible."

24 This Court has also received pleadings --
25 there was one filed by Mr. Castle that attached some

1 302s. One in particular was produced within -- and
2 there are many examples. I'm going to give the
3 Court one example. It's Bates 41707. It's a Billy
4 Cordova 302 regarding a July 14, 2016, interview, in
5 which he talks about helping to murder a Los
6 Carnales gang member, dumping the body in San Jose,
7 in Albuquerque. He refers to lengthy
8 drug-trafficking history and an autobiography of
9 that drug-trafficking history that he was to
10 provide. The Government has had this for a year and
11 a half. Mr. Castellano and Mr. Armijo were at that
12 meeting.

13 THE COURT: All right. All rise.

14 (The jury entered the courtroom.)

15 THE COURT: All right. Be seated.

16 Good afternoon, everyone. I appreciate
17 you being back and on time ready to go. I think
18 we're even a minute or so early. I appreciate
19 everybody working and trying to stay on schedule.

20 Mr. Castellano, if you wish to continue
21 the direct examination of Mr. Acee.

22 Mr. Acee, I'll remind you that you're
23 still under oath.

24 THE WITNESS: Yes, sir.

25 THE COURT: Mr. Castellano.

1 MR. CASTELLANO: Thank you, Your Honor.

2 BY MR. CASTELLANO:

3 Q. We're pulling up the next set of pictures,
4 I believe, starting with Government's 586. I'm
5 going to use the visualizer. While the computer is
6 starting up again, Agent Acee, this is Government's
7 Exhibit 586. Who is this?

8 A. Mario Rodriguez.

9 Q. And the same question as usual: There is
10 a date of December 3, 2015. Is that the same date
11 as the roundup of the other people?

12 A. Yes.

13 Q. I think you testified earlier -- was it
14 your belief that Mr. Rodriguez was charged only with
15 tampering with evidence at the state level?

16 A. Yes.

17 Q. And once this became a federal case, was
18 he then charged with the Molina murder?

19 A. Yes.

20 Q. Showing you Exhibit 587, once again, what
21 can you tell us about what you see in this photo
22 regarding tattoos?

23 A. Across Mr. Rodriguez's abdomen is his
24 moniker, "Blue." In between the L and the U is the
25 state of New Mexico outline that says "Silver City,

1 NM. "

2 Q. And what's your understanding about why
3 there is a "Silver City" in the NM?

4 A. That's where he's from, and the street
5 gang that he belonged to is in Silver City.

6 Q. Once again, you referenced a street gang.
7 So is it your understanding that he was a member of
8 the street gang before he was an SNM Gang member?

9 A. Yes.

10 Q. Anything else from that photograph?

11 A. I think it's better depicted in subsequent
12 photographs, but you can see at his neck he has
13 writing there, and I believe that's the name of his
14 street gang.

15 Q. Turning to Exhibit 588.

16 A. This is a closer photo of Mr. Rodriguez'
17 abdomen with his moniker and the New Mexico tattoo.

18 Q. Looking at Exhibit 589.

19 A. We're looking at Mr. Rodriguez' left arm.
20 You see on his -- just below his wrist he has an
21 "ES" for "east side." That's the street gang that
22 he's part of.

23 Q. For the record, I'm circling something on
24 his wrist. Is that what you were referring to for
25 the "ES"?

1 A. Yes.

2 Q. Turning to Exhibit 590, what, if anything,
3 can you tell from this photograph?

4 A. I see that it looks like he covered up
5 some tattoos there, but I'm not seeing anything of
6 significance.

7 Q. If you can from this photograph, can you
8 see anything on his hand?

9 A. I do see a tattoo on his hand. I can't
10 quite make out what it is.

11 Q. Looking at Exhibit 591.

12 A. That's a close-up of his left inner
13 forearm. Among the different designs there, I see
14 some prison bars here where I'm circling.

15 Q. I'm now showing you Exhibit 592. Are you
16 able to make out anything from this photograph?

17 A. There is writing on the middle finger of
18 his left hand, but it's too blurry.

19 Q. Looking at Exhibit 593.

20 A. This is a similar to a photo I talked
21 about earlier where he has "ES" on his left hand.

22 Q. And 594?

23 A. This is the back of Mr. Rodriguez' head.
24 He has a tattoo on his scalp. It looks like it says
25 "SC." I'm trying to go off memory of times I've had

1 a closer look at it, but I don't recall what it is.
2 And it's not clear in this photo, but I believe the
3 circle here says "Silver City," but I'm going off
4 memory of conversations.

5 Q. You said conversations. Have you had a
6 chance to meet with him and interview him?

7 A. I have.

8 Q. Exhibit 595.

9 A. In this photo it depicts Mr. Rodriguez.
10 He's holding up his shorts, so it's a photo of his
11 legs, that have several tattoos on them. You'll see
12 on the left thigh -- I'll circle it -- there is a
13 large Zia symbol.

14 MR. CASTELLANO: Now, turning to exhibits
15 beginning with 561. These are Exhibits 561 through
16 567.

17 MS. JACKS: No objection, Your Honor.

18 MR. VILLA: No objection.

19 MR. BALL: No objection.

20 THE COURT: All right. Not hearing any
21 objection, Government's Exhibits 561 to 567 will be
22 admitted into evidence.

23 (Government Exhibits 561 through 567
24 admitted.)
25

1 BY MR. CASTELLANO:

2 Q. Agent Acee, I'm showing you Exhibit 561.

3 Who is that?

4 A. Timothy Martinez.

5 Q. Was he arrested the same day as the
6 others?

7 A. Yes.

8 Q. Where was he when you arrested him, or
9 some member of the team?

10 A. He was up at the Penitentiary of New
11 Mexico, PNM North facility in Santa Fe.

12 Q. Showing you Government's Exhibit 562.

13 A. This is a photo of Mr. Martinez's torso.
14 He has his arms extended.

15 Q. I'm showing you Government's Exhibit 563.

16 A. I don't see any gang-specific tattoos.

17 Q. I'm now showing you Exhibit 564. Let me
18 zoom out a little bit.

19 A. That is Mr. Martinez's upper back. You'll
20 see that it says "Silver City" in the center where
21 he is from, and then the outline of the state of New
22 Mexico and it says "Nuevo Mexico." I just noticed
23 as you were pulling away, sir, it looked like there
24 was some Mayan -- some of the Aztec stuff that I
25 referred to earlier, theme, kind of starting here

1 and going down the right half of his back.

2 Q. So for the record, you're showing the back
3 of his right arm, shoulder, and down the right side
4 of his back; isn't that correct?

5 A. Yes, sir.

6 Q. And is Timothy Martinez known by any other
7 names from this investigation?

8 A. He uses the moniker Red.

9 Q. I'm showing you Exhibit 565.

10 A. This is Mr. Martinez's left leg. The
11 photo starts at the knee. You'll see the Zia symbol
12 here with the letter M in it. Below that, the
13 outline of the state of New Mexico. Within the Zia
14 symbol you'll see the numbers 575, the area code
15 down here in southern New Mexico.

16 Q. Let me skip ahead one to -- actually, let
17 me go ahead and show you 566.

18 A. This is the left calf area of Mr.
19 Martinez. And of significance is the peacock that
20 you see on his calf. I've circled it. Some SNM
21 members maintain that that bird is a symbol that's
22 identified with the S. Other members have told me
23 that it's not.

24 Q. I can't tell from here. Is that a peacock
25 or a roadrunner on that tattoo?

1 A. I'm not a bird expert, but I guess it
2 could be a roadrunner.

3 Q. But you have mentioned a peacock. Have we
4 already seen earlier this morning at least one
5 tattoo with a peacock?

6 A. We did.

7 Q. Now, turning to Exhibit 567. We saw the M
8 earlier.

9 A. So you have the other kneecap, where it
10 has the N within the Zia, for New Mexico.

11 Q. Looking down here on the right kneecap in
12 the photograph, can you tell what that is from the
13 photograph?

14 A. First I thought it was a prison tower.
15 I'm just hesitating because it stays kind of wide
16 down here, so it almost looks like an Asian thing,
17 which would go with some of the letters or
18 characters you see on his leg. So I'm not confident
19 that that's a prison tower.

20 Q. I'm going to turn your attention to a set
21 of photographs beginning with Government's Exhibit
22 636.

23 MR. CASTELLANO: These are Exhibits 636
24 through 643.

25 MS. JACKS: Again, no objection, Your

1 Honor.

2 MR. VILLA: No objection.

3 MR. MAYNARD: No objection.

4 MR. LOWRY: No objection.

5 THE COURT: And you're moving their
6 admission, Mr. Castellano?

7 MR. CASTELLANO: Yes, Your Honor.

8 THE COURT: Government's Exhibits 636
9 through 643, without gap, inclusive, will be
10 admitted into evidence.

11 (Government Exhibits 636 through 643
12 admitted.)

13 BY MR. CASTELLANO:

14 Q. Agent Acee, let me begin with Exhibit 636.
15 Even though there is a name up there, who is that
16 person?

17 A. David Calbert.

18 Q. Same date of arrest?

19 A. Yes.

20 Q. Now, can you tell the members of the jury
21 whether or not David Calbert was initially charged
22 with any participation in the Molina murder?

23 A. No, he was not.

24 Q. Can you tell the members of the jury
25 whether he is now in some way tied to the Molina

1 murder?

2 A. Yes, he is.

3 Q. So as this investigation continued, is it
4 fair to say he was not initially charged with that
5 conduct?

6 A. No, he was not charged with the Molina
7 murder. He was charged with different racketeering
8 activity.

9 Q. What was he charged with, if you remember?

10 A. Violent crime in aid of racketeering,
11 assault causing great bodily injury, and I believe
12 there was a second count of violent crime in aid of
13 racketeering, attempted murder.

14 Q. Let's look at Exhibit 637. What do you
15 notice from his tattoos there?

16 A. A couple things. You'll notice on his
17 chin there is an S. There is also a Zia symbol with
18 an SNM here on the lower part of his throat. Across
19 his stomach here he has the name "Spider." That's
20 his moniker.

21 Q. Turning to Exhibit 638.

22 A. This is a close-up view of Mr. Calbert's
23 chin with that S, and then the S on his throat,
24 inside the Zia.

25 Q. Let's look to Exhibit 639.

1 A. That's a close-up photo of his moniker
2 "Spider" on his stomach.

3 Q. And Exhibit 640?

4 A. It's another shot of the S that's on his
5 neck.

6 Q. Now looking at Exhibit 641.

7 A. These are just spider webs. Because his
8 moniker is Spider, it makes sense he has them. They
9 used to be identified with -- people that have done
10 time would have spider webs, but people buy that in
11 tattoo shops, now, too, so it's lost its
12 significance.

13 Q. So let's look at 643 next.

14 A. On the back of Mr. Calbert's neck is his
15 name and his NMCD number.

16 Q. And when you say NMCD, what is NMCD?

17 A. That's his identification number for the
18 Department of Corrections.

19 Q. All right. What about the tattoo across
20 his shoulder blades?

21 A. So that says, "Trust no bitch."

22 Q. Now, looking at Exhibit 643.

23 A. This is another close-up photo of the
24 tattoo on his chin and his neck.

25 Q. And what is the tattoo on his chin?

1 A. The letter S.

2 Q. I discussed earlier about Mr. Calbert --
3 was he also not charged with the Molina murder when
4 it was a state case?

5 A. He was not.

6 MR. CASTELLANO: The next set of photos
7 begin with Exhibits 568 through 573.

8 MS. JACKS: No objection, Your Honor.

9 THE COURT: Anyone else?

10 MR. MAYNARD: No objection.

11 MR. VILLA: No objection, Your Honor.

12 THE COURT: Not hearing any objection,
13 Government's Exhibits 568 through 573 without gap,
14 inclusive, will be admitted into evidence.

15 (Government Exhibits 568 through 573
16 admitted.)

17 BY MR. CASTELLANO:

18 Q. Let's begin with Exhibit 568, please. Who
19 is this person, Agent Acee?

20 A. Roy Martinez.

21 Q. The same arrest date as the others?

22 A. Yes.

23 Q. How was Mr. Martinez implicated in this
24 case, or what was he charged with?

25 A. Mr. Martinez was charged with racketeering

1 violations related to the conspiracy to kill Gregg
2 Marcantel and Dwayne Santistevan.

3 Q. Now, you previously mentioned that
4 somebody -- I think Eric Duran -- turned over
5 letters to corrections officials?

6 A. Yes.

7 Q. Can you tell the members of the jury
8 whether any of those letters were authored by Mr.
9 Martinez?

10 A. Yes.

11 MR. LOWRY: Objection. Calls for hearsay.

12 THE COURT: Why don't you lay a foundation
13 how he knows this information before he testifies
14 about it.

15 BY MR. CASTELLANO:

16 Q. Have you had a chance to read any of those
17 letters?

18 A. All of them.

19 Q. And do any of those letters claim to be
20 written by someone named Roy Martinez?

21 A. Yes.

22 Q. Let's take a look at Exhibit 569.

23 A. In this photograph we see Mr. Martinez's
24 chest and abdomen. I'm circling a Zia in which the
25 letters SNM are listed.

1 Q. What does SNM stand for?

2 A. It's the New Mexico syndicate, or
3 Sindicato de Nuevo Mexico.

4 Q. And on the various tattoos you've seen
5 throughout this case, does the word "syndicate" or
6 "sindicato" -- have you seen it spelled different
7 ways?

8 A. Yes.

9 Q. What ways have you seen it spelled?

10 A. Well, "syndicate" is spelled the standard
11 English way you would spell it. "Sindicato" I have
12 seen spelled with both a Y and an I. I have seen
13 the Corrections Department spell it that way, both
14 ways. And I have seen members of the SNM spell it
15 both ways on tattoos on their body. So it seems to
16 just be a preference.

17 Q. So the first two letters, either S-I or
18 S-Y?

19 A. Correct.

20 Q. Let's take a look at 570.

21 A. This is a closer-up photo of Mr. Martinez'
22 stomach. It depicts a Zia with the SNM. To the
23 right of that in the photo, it looks like it says
24 "West Side Locos," with a 16. Off the top of my
25 head, I don't remember what street gang he grew up

1 in, but I know the West Side Locos to be a street
2 gang.

3 Q. When you say West Side Locos, are we
4 looking at three letters, W-S-L?

5 A. Yes.

6 Q. We're looking at 571. What else do you
7 notice about the tattoos in this exhibit?

8 A. Well, in this one I see Mr. Martinez.
9 He's holding his arms out so we can see part of his
10 bicep. Then down his forearms. It looks like he
11 has a Zia on his left arm, and he covered up some
12 other tattoos below that. On his other arm I don't
13 see anything of significance.

14 Q. And throughout this investigation, by what
15 other name or names have you known Roy Martinez?

16 A. Shadow or Big Shadow.

17 Q. Looking at Exhibit 572.

18 A. This is Mr. Martinez with his shirt off,
19 and you'll see on his upper right shoulder on the
20 back he has a tattoo of a home boy and it says
21 "Shadow" above it.

22 Q. And then Exhibit 573?

23 A. This is Mr. Martinez' out photo.

24 Q. Have you had a chance to visit with Mr.
25 Martinez and interview him?

1 A. I have.

2 Q. And is he cooperating in relation to the
3 Gregg Marcantel and Dwayne Santistevan part of this
4 investigation?

5 A. Yes.

6 MR. CASTELLANO: Okay. I'm looking next
7 at the exhibits beginning with Exhibit 574 through
8 580.

9 MS. JACKS: No objection. Your Honor.

10 MR. VILLA: No objection.

11 MR. LOWRY: No objection.

12 MR. MAYNARD: No objection.

13 THE COURT: Government's Exhibits 574
14 through 580, inclusive, without gap, are admitted
15 into evidence.

16 (Government Exhibits 574 through 580
17 admitted.)

18 BY MR. CASTELLANO:

19 Q. And beginning with Exhibit 574, who are we
20 looking at?

21 A. Robert Martinez.

22 Q. And was he arrested on the same date?

23 A. Yes.

24 Q. Was he in prison at that time?

25 A. He was.

1 Q. Let's look at 575.

2 A. In this photo, Mr. Martinez' chest and
3 arms are exposed with several tattoos. It looks
4 like he covered up some tattoos in this area, but I
5 don't see anything of significance.

6 Q. Let's then turn to 576. Anything of
7 significance there that stands out?

8 A. No, sir.

9 Q. Exhibit 577.

10 A. This is Mr. Martinez' -- the underside of
11 his left arm, starting at his armpit and running
12 down his forearm. He has the letters SNM on his
13 tricep area.

14 Q. Has he self-identified as an SNM Gang
15 member?

16 A. Yes.

17 Q. 578.

18 A. That's a closer view of that same photo.

19 Q. Then Exhibit 579. Do you see anything
20 there?

21 A. No, sir.

22 Q. Finally, Exhibit 580.

23 A. No, sir.

24 Q. Now, how is Mr. Martinez, Robert Martinez,
25 implicated in this case?

1 A. He was charged in the
2 Marcantel-Santistevan conspiracy, as well as another
3 violent-crime-in-aid- of-racketeering assault that
4 took place.

5 Q. What was he alleged to have done when it
6 comes to the Marcantel-Santistevan conspiracies?

7 A. He authored letters that were sent out to
8 the street to members on the street to hit Marcantel
9 and Santistevan.

10 Q. What about the assault?

11 A. In the assault he and another member
12 paired up to assault an SNM member that had
13 disrespected Baby Rob, or Mr. Martinez.

14 Q. Let me turn your attention then to
15 Government 581 through 585.

16 MS. JACKS: No objection.

17 MR. VILLA: No objection.

18 MR. LOWRY: No objection.

19 MR. MAYNARD: No objection.

20 THE COURT: And assuming you're going to
21 move their admission, Government's Exhibits 581
22 through 585 will be admitted into evidence.

23 (Government Exhibits 581 through 585
24 admitted.)

25 MR. CASTELLANO: Thank you, Your Honor.

1 BY MR. CASTELLANO:

2 Q. Okay. Beginning with Exhibit 581, who is
3 that?

4 A. Gerald Archuleta.

5 Q. Now, I notice in this exhibit there is a
6 different date of April 28, 2016.

7 A. Yes.

8 Q. So I want to pause there for a moment and
9 ask you, you mentioned phase 1 of this prosecution
10 or the investigation was in December of 2015. So
11 what happened between that time and the time that we
12 have photographs of Mr. Archuleta?

13 A. We continued our investigation, continued
14 collecting evidence, and then myself and the other
15 agents assigned to the case went back to the federal
16 grand jury, provided testimony, secured indictments
17 and arrest warrants for phase 2 defendants. Similar
18 to phase 1, we put together operational plans,
19 search warrants, and did another large-scale law
20 enforcement takedown around New Mexico and elsewhere
21 early in the morning.

22 Q. All right. So looking at Exhibit 581,
23 where was Mr. Archuleta when he was arrested?

24 A. He was in Tennessee.

25 Q. And was he in or out of prison at that

1 time?

2 A. He was out. He had a house, had a job,
3 living on the street -- excuse me, not living on the
4 street, but on the street.

5 Q. And if you recall, do you remember how
6 long he'd been out of prison?

7 A. More than a couple years. I don't
8 remember the exact time. But he did his parole
9 time. He transferred his parole out to Tennessee,
10 and successfully completed it out there.

11 Q. Looking at the next exhibit, 582.

12 A. This is a photo of Mr. Archuleta with his
13 shirt off depicting the front of his body.

14 Q. At some point in time, was Mr. Archuleta
15 known to be a leader of the SNM Gang?

16 A. Yes. I think we'll capture it in another
17 photo, but if you look at the top of his pants, it
18 will say "Nuevo Mexico" there. You can just make it
19 out.

20 Q. We may or may not have one of those, but
21 let's turn to 583. Anything of significance stand
22 out in that exhibit?

23 A. No.

24 Q. Okay. Turn to Exhibit 584.

25 A. We might disagree on the bird, but I see

1 two peacocks at the top of his shoulders there, and
2 then on the back of his neck it says "Lilly."

3 Q. So no roadrunners in this picture?

4 A. No what?

5 Q. No roadrunners in this picture? Peacocks?

6 A. Not in my opinion, no.

7 Q. Exhibit 585.

8 A. On his right shoulder he has the name
9 Lilly S. I only mention that it's not a gang
10 tattoo, but someone in their opening -- I think it
11 was Ms. Armijo -- actually talked about the
12 controversy and the civil war in the SNM. This is
13 the lady it ends up being over.

14 Q. We'll probably hear from other witnesses,
15 but was that issue a point of contention within the
16 gang?

17 A. Well, it was a point of contention between
18 these two guys, and they politicked to make it a
19 point of contention in the gang.

20 Q. You mentioned two guys. Who were the two
21 guys?

22 A. Gerald Archuleta and Julian Romero.

23 Q. And for what charge was Mr. Archuleta
24 arrested?

25 A. Violent crime in aid of racketeering. I'm

1 only hesitating because there were three charges I
2 thought were applicable. But in the end, I think
3 all that ultimately he was held responsible for was
4 the violent-crime-in-aid-of-racketeering attempt to
5 commit assault resulting in great bodily injury.

6 Q. And who was the victim of that assault?

7 A. Julian Romero.

8 Q. Turning to Government's Exhibit 628
9 through 635.

10 MS. JACKS: No objection, Your Honor.

11 MR. VILLA: No objection.

12 MR. LOWRY: No objection, Your Honor.

13 MR. MAYNARD: No objection.

14 THE COURT: All right. Assuming the
15 Government is moving the admission, Government's
16 Exhibits 628 through 635 inclusive and without gap
17 are admitted into evidence.

18 (Government Exhibits 628 through 635
19 admitted.)

20 MR. CASTELLANO: Thank you, Your Honor.

21 BY MR. CASTELLANO:

22 Q. Beginning with Exhibit 628, who is this
23 person?

24 A. Manuel Jacob Armijo.

25 Q. And I see once again the date of April 28,

1 2016, on there?

2 A. Yes.

3 Q. Was this, then, part of the phase 2?

4 A. It was.

5 Q. And when phase 2 happened, were additional
6 charges brought against additional defendants in
7 that next phase of the operation?

8 A. Yes.

9 Q. And so can you tell the jury, in addition
10 to the people in court today, were there other
11 members charged and other members still pending
12 trial?

13 A. Yes. Should I stop there?

14 Q. Yes. And is Mr. Armijo known by any other
15 names?

16 A. Big Jake.

17 Q. Let's turn to the next exhibit, 629.

18 A. This is Mr. Armijo's right arm. On the
19 back side of his arm you see the prison tower with
20 the gate and the barbed wire. Just below that a Zia
21 with an S in it.

22 Q. All right. Turning to Exhibit 630.

23 A. Nothing on that one.

24 Q. Next is Exhibit 631.

25 A. This tattoo that I'm circling that has the

1 paw print and then it says MEX, M-E-X. To me, this
2 is a tattoo that signifies not only New Mexico but
3 Albuquerque, given the reference to what I recognize
4 to be to the Lobos.

5 Q. What's at the bottom of his arm?

6 A. It's a Zia symbol, and if I remember
7 correctly, inside that there is the letter S. I
8 think we'll have another image of it.

9 Q. Turning to Exhibit 632, what do we see
10 there?

11 A. So in this photo a couple of things.
12 Across his lower stomach is Barelvas, which is an
13 older neighborhood in Albuquerque, and is one of the
14 older street gangs in New Mexico. A lot of the
15 founding members of the SNM are from that
16 neighborhood, as is Mr. Armijo. Then you start to
17 make out -- looks like on his left arm, which is
18 depicted on the right side of the photo, it looks
19 like he covered up some tattoos here. And then
20 there is another Zia symbol below that.

21 Q. Let's go ahead and turn to 633, then, to
22 get a better look.

23 A. So the Zia symbol I was referencing is
24 shown in this photo, and it's got the S in the
25 center.

1 Q. And 634?

2 A. It's the same thing.

3 Q. Exhibit 635?

4 A. This is Mr. Armijo's back. See on the
5 back of his right tricep the Zia with the S.

6 Q. If you recall, what was Mr. Armijo charged
7 with?

8 A. RICO Act conspiracy, Racketeer Influenced
9 and Corrupt Organizations Act conspiracy.

10 Q. And was he charged in a separate
11 indictment than the gentlemen in court? It was a
12 RICO conspiracy?

13 A. Two of the gentlemen in court were charged
14 with that as well.

15 Q. Let me ask you in that indictment, was
16 there any allegation against Mr. Armijo regarding a
17 murder in the overt acts of that indictment?

18 A. Yes.

19 Q. And was that indictment later superseded
20 or changed in any way regarding that murder?

21 A. Yes.

22 Q. And what happened with the murder charge
23 in which he was implicated between the first
24 indictment and the second indictment in his case?

25 A. It was -- those overt acts were dropped

1 because we determined that --

2 MS. JACKS: Objection, hearsay.

3 THE COURT: Are you trying to elicit this
4 out-of-court?

5 MR. CASTELLANO: I am, Your Honor.

6 THE COURT: Why don't y'all approach on
7 this.

8 (The following proceedings were held at
9 the bench.)

10 THE COURT: What is he going to say?
11 What's he about to say?

12 MR. CASTELLANO: I think what he's going
13 to say is that the further investigation revealed
14 that he was not involved with that and therefore the
15 charge was removed.

16 MS. JACKS: I think that's a conclusion
17 based on hearsay, and it's irrelevant.

18 THE COURT: Well, but if it's his
19 conclusion from his investigation, I don't think
20 it's hearsay. If he did the investigation and
21 concluded --

22 MS. JACKS: The investigation was based on
23 interviewing people.

24 THE COURT: Well, he interviewed people,
25 but he made the determination. Overruled.

1 MS. DUNCAN: Your Honor, I'd like to move
2 for a mistrial based on Bryan Acee announcing to the
3 jury that two of the defendants are being charged in
4 another case not before the jury. That is was
5 improper.

6 THE COURT: These other defendants --

7 MS. DUNCAN: There are two people in this
8 room that have been charged in another case, is what
9 he said; which now these jurors are aware of another
10 case pending against two of them. So on that
11 ground, I would ask for a mistrial.

12 THE COURT: Well --

13 MR. VILLA: I want to join on behalf of
14 Mr. Perez, because the testimony was that two of the
15 defendants were joined, charged, in another
16 indictment. It's not clear who. So it leaves the
17 impression that it could be Mr. Perez.

18 THE COURT: Can you clear it up, and can
19 you somehow eliminate this thing with Baca being in
20 the other cases?

21 MR. CASTELLANO: When he first said it, I
22 noticed the comment, and quickly moved to another
23 subject to try to minimize that. But I did notice
24 the comment, which was not intended to be elicited.

25 THE COURT: Why don't you tell him you're

1 going to come back to it and clear up that none of
2 the men in this case are charged in other cases, and
3 just get an answer from him.

4 MS. JACKS: Mr. Sanchez joins in the
5 objection, and I also think it's probably
6 inappropriate for Mr. Castellano to tell Agent Acee
7 to come back to court and testify to something
8 that's not true.

9 MR. CASTELLANO: I agree. He can't do
10 that. So the question is what we can do to minimize
11 that or shape his testimony to minimize or gloss
12 over that.

13 MR. LOWRY: That horse has left the barn.

14 THE COURT: Do this: Minimize it by
15 saying, "Let's clear up right now, Mr. Sanchez is
16 not charged in any other cases; Mr. Perez is not
17 charged in any other case; Mr. Herrera is not
18 charged in any other case," and move on.

19 MS. JACKS: I would object to that as a
20 solution because it's instructing him to elicit
21 false evidence.

22 THE COURT: It's not false evidence.

23 MS. JACKS: It's not true. Mr. Sanchez is
24 charged in another case, and referred to by Agent
25 Acee.

1 THE COURT: Well, clear it up as to the
2 ones that are truthful.

3 MS. JACKS: That's going to highlight it
4 all the more to Mr. Sanchez.

5 THE COURT: Make up your mind. Move on.

6 MS. JACKS: Move for a mistrial.

7 THE COURT: That's denied. What do you
8 want? Do you want this testimony or not?

9 MS. JACKS: I don't want anything further
10 on behalf of Mr. Sanchez. Let's go back to our
11 chairs. The other Defendants may feel differently.

12 THE COURT: Go back to your chairs.

13 (The following proceedings were held in
14 open court.)

15 THE COURT: Mr. Castellano.

16 BY MR. CASTELLANO:

17 Q. Now, Agent Acee, you had earlier talked
18 about the use of informants. And as a result of the
19 use of informants, can you tell the members of the
20 jury whether Mr. Herrera and Mr. Perez were added to
21 the Molina murder?

22 A. Yes, they were.

23 Q. So beginning with Exhibits 539 through
24 547, I'll approach in a second.

25 MR. VILLA: No objection from Mr. Perez.

1 MS. JACKS: No objection.

2 MR. LOWRY: No objection.

3 MR. MAYNARD: No objection.

4 THE COURT: All right. Government's
5 Exhibit 539 through 547, without gap, inclusive,
6 will be admitted into evidence.

7 (Government Exhibits 539 through 547
8 admitted.)

9 BY MR. CASTELLANO:

10 Q. Now, referring to other charges with these
11 defendants, we continue to say "the Molina murder,"
12 but is there more than one charge to include a
13 conspiracy to murder?

14 A. Yes.

15 Q. So looking at Exhibit 539, who is this
16 person?

17 A. Rudy Perez.

18 Q. Is this one of the defendants on trial?

19 A. Yes, sir.

20 Q. I notice the date there is also April 28
21 of 2016.

22 A. Phase 2.

23 Q. So without getting into the details, how
24 is it that Mr. Perez was not charged initially but
25 was charged in the later indictment?

1 A. We developed additional information that
2 supported probable cause to charge him.

3 Q. And who was the person who was involved
4 with that part of the investigation? Which
5 cooperator?

6 A. Billy Cordova, Little Shadow.

7 Q. And how did you come to know Billy
8 Cordova?

9 A. Depends how long of a story you want. But
10 the short version is: He was in custody up at MDC,
11 which is the Metropolitan Detention Center in
12 Bernalillo County. I was at the detention center
13 visiting another SNM member who was cooperating.
14 The manner in which the correctional officers
15 brought the cooperator into the office to talk to me
16 compromised the cooperator. It basically --
17 because --

18 Q. Here's the question. MDC is where and
19 what is it called?

20 A. It's the Metropolitan Detention Center.
21 It's Bernalillo County's jail. It's west of
22 Albuquerque.

23 Q. And did you say that you were intending to
24 meet with a cooperator there?

25 A. Yes.

1 Q. And what's the issue in meeting with
2 somebody who is cooperating with you in a jail or
3 prison facility? What concerns do you have?

4 A. Well, it's kind of a delicate matter,
5 because when I arrive at a jail, because I don't
6 work there, I have to identify myself. And jails
7 and prisons have ears and news travels quickly. And
8 what the concern was, being able to visit a
9 cooperator without compromising the fact that the
10 cooperator is meeting with the FBI.

11 Q. And in order to kind of gloss over that
12 situation at the jail, what procedure or tactic did
13 you use?

14 A. The cooperator was living in an SNM pod.
15 So we asked the jail to pull everybody from the pod
16 one at a time, to make it look like we were there to
17 interview all the SNM members. That way, I could
18 relay the information to the informant, and make it
19 look like he's just another guy getting questioned
20 by the FBI that day. Phase 1 of the investigation
21 happened. The SNM is well aware that the FBI is
22 pursuing them, investigating them. So for the FBI
23 to show up and interview everybody in the jail
24 that's SNM is a good cover story at that point.

25 Q. Okay. So this would be then after

1 December, which is phase 1, leading up to April; is
2 that the correct timeframe? Is this before the
3 indictment adding Defendants Herrera and Perez?

4 A. Yes.

5 Q. So what happens -- what do you expect when
6 Billy Cordova walks in the room?

7 A. I thought we were going to have problems
8 with him. According to the guards, they actually
9 brought extra correctional officers in because they
10 thought he would attack us.

11 Q. And at that point was he cooperating at
12 all?

13 A. No.

14 Q. Did you expect him to cooperate at all?

15 A. I did not.

16 Q. And what happened once you met him?

17 A. He came in with a big smile, he sat down,
18 and he talked to -- at the time, I sat off to the
19 side and I had two other agents talking to him. And
20 I was just sort of evaluating him without talking to
21 him. After some time, I entered the conversation
22 and he agreed to cooperate with us.

23 Q. Did that surprise you?

24 A. Very much so. In fact, I didn't even have
25 a pen and a piece of paper out. I didn't expect him

1 to talk to me.

2 Q. And when he agreed to cooperate with you,
3 was he charged with any crimes?

4 A. I didn't charge him with any crimes. He
5 was at jail because he'd been charged with a crime.

6 Q. What was he in jail for at the time?

7 A. He'd been charged with a homicide, and he
8 pled guilty to something less than homicide. I
9 think it might have been manslaughter.

10 Q. Do you remember if he pled guilty or went
11 to trial on that matter?

12 A. Thank you. I think he actually -- I'm not
13 sure.

14 Q. If you don't remember, that's okay.

15 A. I don't recall.

16 Q. Did you discuss with him the idea that you
17 might be looking at him to charge him because other
18 people had already been charged?

19 A. Yes.

20 Q. And once he decided to cooperate, what
21 decision did you make about any charge decisions
22 regarding Billy Cordova?

23 A. I don't make charging decisions. I make
24 recommendations to the U.S. Attorney's office. When
25 Billy Cordova told me that he would cooperate, at

1 that point I was no longer looking to charge him. I
2 was looking to utilize him as a tool to continue to
3 collect the information on the SNM.

4 Q. And based on what you knew of his status
5 in the gang, did you think that you could utilize
6 him successfully?

7 A. Absolutely.

8 Q. And did you utilize him?

9 A. I did.

10 Q. For what purpose?

11 A. To simply go back into the prison as a
12 good-standing member of the S, a popular well-known
13 one, wearing an FBI wire.

14 Q. Can you tell the members of the jury if he
15 wore a wire when he was housed next to Rudy Perez?

16 A. He did.

17 Q. And Carlos Herrera?

18 A. He did.

19 Q. And as a result of recordings and what the
20 investigation revealed, were these two gentlemen
21 then added to the Molina murder?

22 A. Yes.

23 MR. VILLA: Objection, Your Honor.

24 THE COURT: What's the objection?

25 MR. VILLA: I mean, I think this is based

1 on hearsay information. He's essentially asking the
2 results of information that transpired between Mr.
3 Cordova and Mr. Perez.

4 THE COURT: Overruled.

5 BY MR. CASTELLANO:

6 Q. Then turning to Exhibit 539, who are we
7 looking at?

8 A. Rudy Perez.

9 Q. And let's turn then to Exhibit 540. What,
10 if anything, do you notice about his tattoos in
11 Exhibit 540?

12 A. Nothing of significance. He has his name
13 on his lower stomach, but nothing of significance.

14 Q. Turning to 541.

15 A. There is a tattoo there on his neck that
16 says "Mi Vida Loca," "my crazy life." We in law
17 enforcement used to attribute that to gangs. But a
18 lot of people get them who aren't gang members.

19 Q. So in your opinion, that tattoo by itself
20 may not necessarily have any significance?

21 A. Today, as I sit here, that tattoo doesn't
22 mean anything.

23 Q. Let's look at Exhibit 542. Look at the
24 bottom of his arms.

25 A. Yes. It says "New" on the back side of

1 his wrist.

2 Q. Let's go to Exhibit 543.

3 A. On the opposite wrist it says "Mexico."

4 Q. Turning to Exhibit 544, anything that you
5 notice from that particular exhibit?

6 A. No.

7 Q. Exhibit 545.

8 A. On the upper portion of Mr. Perez' back,
9 it says "Brown Pride."

10 Q. Exhibit 546.

11 A. On the back of Mr. Perez' left shoulder,
12 there is a tattoo of a peacock.

13 Q. You talked a little bit about that
14 earlier. Have you noticed peacock tattoos on other
15 people who were arrested as part of the overall
16 investigation?

17 A. Yes.

18 Q. Exhibit 547. Anything stand out in that
19 one?

20 A. No, sir.

21 Q. Turning to the exhibits beginning with
22 number 528 to 530.

23 MS. JACKS: We have no objection.

24 MR. VILLA: No objection.

25 MR. LOWRY: No objection, Your Honor.

1 MR. MAYNARD: No objection.

2 THE COURT: All right. Government's
3 Exhibits 528, 529, and 530 will be admitted into
4 evidence.

5 (Government Exhibits 528 through 530
6 admitted.)

7 BY MR. CASTELLANO:

8 Q. Beginning with Exhibit 528. Who is this?

9 A. Carlos Herrera.

10 Q. And judging by the date of April 28, does
11 this mean this was part of phase 2 of the
12 investigation?

13 A. Yes.

14 Q. Looking at 529.

15 A. This is a photo of Mr. Herrera with his
16 shirt off. You see just above his belly button he
17 has a Zia with an S in it.

18 Q. Exhibit 530?

19 A. That's a close-up photo of the same.

20 Q. Also looking at Exhibit 531?

21 A. The same.

22 Q. And 532, anything of significance in 532?

23 A. No, sir.

24 Q. Or 533?

25 THE COURT: All right. You haven't moved

1 these admissions. Do you want to pull those down
2 for a second? What numbers are these?

3 MR. CASTELLANO: Your Honor, these are --
4 and I apologize. These are Exhibits 528 through
5 538. I thought I had. But I may have missed that.

6 THE COURT: What you said a minute ago was
7 528 to 530. Did you mean 538?

8 MR. CASTELLANO: Yes, Your Honor, 538.

9 THE COURT: Any objection to those?

10 MS. JACKS: No.

11 MR. VILLA: No, Your Honor.

12 MR. LOWRY: No, objection.

13 MR. MAYNARD: No, Your Honor.

14 THE COURT: So 528 through 538 will be
15 admitted into evidence.

16 (Government Exhibits 528 through 538
17 admitted.)

18 MR. CASTELLANO: Thank you, Your Honor.

19 BY MR. CASTELLANO:

20 Q. So let's look at 534. Anything there that
21 stands out?

22 A. No.

23 Q. Turning to Exhibit 535?

24 A. This is a photo of Mr. Herrera's left
25 hand. He has an 18 on his middle fingers.

1 Q. Have you seen the number 18 on other
2 people?

3 A. Yes.

4 Q. And what has it meant for the other
5 people?

6 A. 18th Street Gang in Albuquerque.

7 Q. Looking at Exhibit 536?

8 A. This is the back of Mr. Herrera's head and
9 neck, and you see it's spelled out 18 again in
10 reference to the street gang.

11 Q. Exhibit 537?

12 A. I don't see anything of significance.

13 Q. And that Exhibit 538.

14 A. This is Mr. Herrera's left hand and you
15 see his moniker there, "Lazy." Earlier I talked
16 about that tattoo that said "Mi Vida Loca." It can
17 also signify those three dots. But again, kids in
18 high school get these now sometimes.

19 Q. So from this investigation, have you come
20 to know Mr. Herrera as Lazy?

21 A. Yes. That's his moniker.

22 Q. I mentioned another indictment earlier.
23 Is it fair to say that in the first indictment, Mr.
24 Sanchez and Mr. Baca were named when this was first
25 charged?

1 A. Yes.

2 Q. And then when it was charged a second
3 time, were they renamed in that indictment adding
4 these two defendants?

5 A. Yes.

6 Q. I'm going to go back to something I missed
7 with Mr. Armijo, Manuel Jacob Armijo.

8 A. Yes.

9 Q. I was asking you about his indictment. In
10 his case, do you recall conduct in his first
11 indictment that was removed from a second
12 indictment?

13 A. Yes.

14 Q. What did that relate to?

15 A. It related to the murder of SNM member
16 Michael Giron, alias "Choo Choo," in Albuquerque.

17 Q. And when you looked closer into those
18 allegations, did you, in conjunction with the U.S.
19 Attorney's Office, decide to remove that conduct
20 from the second indictment?

21 A. Yes. Evidence works both ways. If we
22 find something that shows they didn't do it, then
23 that was the case there, they took it out.

24 Q. And to clarify this, is Mr. Armijo
25 cooperating with the Government?

1 A. Yes.

2 Q. And was that -- can you tell the members
3 of the jury whether that conduct was removed from a
4 second indictment because he was cooperating or
5 because the investigation showed something
6 otherwise?

7 A. To be clear, it was removed because the
8 investigation showed otherwise.

9 Q. Okay. Now, moving to cooperators in this
10 case, obviously the jury heard about benefits and
11 things of that nature in opening statements. Can
12 you tell the members of the jury whether some of the
13 cooperators in this case received benefits?

14 A. Yes.

15 Q. So turning to people like, let's say,
16 Jerry Armenta or Jerry Montoya, people like them,
17 can you tell the members of the jury whether or not
18 they were incarcerated pending their charges?

19 A. They were in custody. They were
20 incarcerated.

21 Q. And while they were incarcerated, did the
22 FBI put any money on their books? And I'll have you
23 explain that in a second.

24 A. Yes.

25 Q. What does it mean to put money on

1 someone's books?

2 A. If you had a family member that was in
3 prison and you wanted to send money for them to
4 utilize to make phone calls or buy stamps or letters
5 or drawing pencils or extra food, you put money on
6 their books.

7 Q. And is that like a prison or jail account?

8 A. Yes. You give the money to the Department
9 of Corrections, you let them know which inmate it's
10 for, and it goes on their account.

11 Q. And for people like that -- the jury will
12 hear about each of them individually later on. But
13 for people who you put money on their books,
14 oftentimes what was the amount that was placed on
15 their jail or prison books?

16 A. It averaged out to about \$50 a month, or a
17 little less than \$2 a day.

18 Q. What was the purpose of doing that?

19 A. So they could buy extra stamps, envelopes,
20 drawing pencils, chips, snacks. They could make
21 extra phone calls, because those cost money in some
22 of the levels -- well, some of the areas of the
23 prison. And some of the guys asked that the money
24 be sent to their wives instead, because they had to
25 buy shoes because school was starting. So they were

1 free to use it within the prison. However, the
2 prison allowed them to use that dollar-something a
3 day. On the outside, if they asked us to give the
4 \$50 to their wife or girlfriend, we'd try to
5 accommodate that.

6 Q. So was this after each of these
7 individuals turned their backs on the prison gang?

8 A. Yes. This is once they were cooperating
9 and were relocated to a different facility for
10 safety.

11 Q. And what happened to any of these
12 individuals if they broke the rules?

13 A. Our rules?

14 Q. Yes.

15 A. I talked to them.

16 MS. JACKS: Objection, compound.

17 THE COURT: Overruled.

18 A. I'd talk to them, confront them about it.
19 The Corrections Department would be involved in it,
20 because they're inmates. And from the FBI
21 perspective, I closed them. I closed them as an
22 informant. It doesn't mean I didn't still talk to
23 them, or talk to them through their attorney, visit
24 them. It doesn't mean they didn't cooperate. But
25 the FBI stopped paying them and officially closed

1 them as an FBI informant.

2 Q. What was the purpose of opening them as
3 FBI informants?

4 A. Simply stated -- well, a few things.
5 Because some of them were actually operational,
6 where they wore wires and did things like that. In
7 order for an informant to be operational for us,
8 there are certain rules and protocols that have to
9 be followed, the first of which is: I actually have
10 to open them as an informant. That starts that
11 documentation process, that official recognition
12 that they're working with us.

13 In terms of, you know, just being a case
14 agent and trying to manage a lot of aspects of the
15 case, I like them being open as an informant because
16 it helped me manage -- use the FBI's resources to
17 manage that person. So for example, if an informant
18 got commissary money or the \$50 a month, a different
19 entity within the FBI kept that accounting for me so
20 that I didn't have to. And so it was a good way to
21 manage them.

22 Q. Why did you feel it necessary to account
23 for the benefits that you were giving them?

24 A. That is all important information when we
25 go to court and I'm asked by both the prosecution

1 and the defense to provide that information. I'm
2 then able to, down to the penny, with dates, because
3 anytime we provide money to an informant, they have
4 to sign our receipt. It's not always in their real
5 name, but it's in an FBI-created name with an FBI
6 informant number so we can keep track of that.

7 Q. And then, as you stated, once you have
8 benefits, you also not only turn over that
9 information to the Government, but it goes to the
10 defense attorneys?

11 A. It does. I don't typically provide stuff
12 directly to the defense, but I do it through your
13 office.

14 Q. Now, you mentioned earlier you had moved a
15 couple of people.

16 A. Yes.

17 Q. Tell us who you moved in relation to this
18 case.

19 A. Do you want to start in prison or on the
20 street?

21 Q. Let's start on the street.

22 A. Okay. After -- actually, just before the
23 phase 1 takedown, we moved Mario Montoya. That was
24 the informant I had on the street that was acting as
25 the hit man in the Marcantel-Santistevan conspiracy.

1 I moved him out of state.

2 I also moved -- subsequently moved Eric
3 Duran when he got out of prison. The Department of
4 Corrections allowed him to start his parole term
5 early. And so we moved him out of state for safety
6 as well.

7 Other cooperators, I offered to move them
8 out of state. In one instance we helped move a
9 cooperator's wife out of state who felt threatened.
10 In other instances I've offered, but I can't
11 think -- not everybody wants to leave New Mexico.

12 Q. So for people like Eric Duran and Mario
13 Montoya, what was your concern about getting them
14 out of the state?

15 A. They were walking dead men.

16 Q. And can you tell the members of the jury
17 whether their voices showed up on recordings that
18 were turned over?

19 MR. LOWRY: Objection, Your Honor,
20 hearsay.

21 THE COURT: It's just a yes/no question.
22 Overruled.

23 Don't tell us the contents. Just tell us
24 yes or no.

25 MR. CASTELLANO: Can I have the question

1 again? I forgot, Your Honor.

2 THE COURT: The question was: "Can you
3 tell the members of the jury whether their voices
4 showed up on the recordings that were turned over?"

5 A. Yes.

6 BY MR. CASTELLANO:

7 Q. Correct. I'm not worried about the
8 content. What I want to know is whether their
9 voices were captured on recordings when they were
10 talking to other people charged in this case.

11 A. Yes.

12 Q. And did that give you concern?

13 A. Yes.

14 Q. Did that give them concern?

15 A. Yes.

16 MS. JACKS: Objection. Move to strike;
17 testimonial and hearsay.

18 THE COURT: Overruled.

19 BY MR. CASTELLANO

20 Q. Regarding Mr. Duran, there has been --
21 well, it's not in evidence, but it was talked about
22 in opening statements by the attorneys. Are you
23 aware of whether or not his sentence in the
24 Corrections Department was reduced?

25 A. Yes.

1 Q. And are you aware of why his sentence in
2 the Corrections Department was reduced?

3 A. Yes.

4 Q. What was the basis?

5 A. The Department of Corrections awarded him
6 with, I believe, two lifesaving awards. It's
7 something I wasn't familiar with before this case.
8 But he was credited with saving two lives, and so
9 there is -- their policies allow them to award time
10 off their sentence for that.

11 Q. Did you ask for that?

12 A. I did not. I wasn't aware of it when it
13 was brought up. I know about it after the fact.

14 Q. In terms of benefits to Eric Duran, what
15 type of monetary benefits did he receive?

16 A. He received money from the FBI. I don't
17 have the exact amount. I know that I put -- in late
18 2016 I put \$25,000 on his prison account, which is
19 not an ideal way to pay an informant, but
20 circumstances in the Government were that I had to
21 spend the money due to fiscal end-of-year kind of
22 silly stuff. So I paid him \$25,000.

23 Q. Did any of the other people cooperating
24 with the Government receive that much money?

25 A. No, not anywhere near that.

1 Q. What was different about Eric Duran?

2 A. Duran made his way to the top of the SNM's
3 hit list. He recorded --

4 MR. LOWRY: Objection, Your Honor, that
5 calls for --

6 THE COURT: Sustained. Let's try not to
7 ask open-ended questions like that.

8 MR. CASTELLANO: Understood, Your Honor.

9 MS. JACKS: Can the answer be stricken and
10 the jury be instructed?

11 MR. LOWRY: Can we approach the bench?

12 THE COURT: No, you can't. The jury will
13 disregard that statement, and it will stricken from
14 the record.

15 Mr. Castellano.

16 BY MR. CASTELLANO:

17 Q. Agent Acee, I may lead you through part of
18 the testimony here. So you mentioned that you
19 wanted to move him out of state?

20 A. Yes.

21 Q. Did the money help cover the moving
22 expenses?

23 A. Yes.

24 Q. And what else did the money cover in terms
25 of benefits to Eric Duran and moving him out of

1 state?

2 A. I calculated the amount, I factored in
3 moving Mr. Duran and his family and children, the
4 expenses related to moving a significant distance
5 from New Mexico. It wasn't just a neighboring
6 state. I factored in six months of rent at the new
7 location, which has a much higher rent than New
8 Mexico. And then just some of the basic living
9 expenses associated with that move.

10 Q. And with Eric Duran, once he moved, did he
11 continue working for the FBI?

12 A. Yes.

13 Q. Did he continue working for you or for
14 another office of the FBI?

15 A. He -- when he moved, he was transferred to
16 another agent in another office of the FBI.

17 Q. And was he involved in other operations?

18 A. Not for New Mexico, but for the new
19 office, yes.

20 Q. And if any of those investigations are
21 pending, I won't ask you about those. I'll stay
22 away from those.

23 But as a result of him moving out of
24 state, what, if any, other benefits did you provide
25 to him once you moved him?

1 A. I want to be clear. He received more than
2 the \$25,000 from New Mexico agents. There were some
3 other costs that came up. I know at one time we
4 gave his wife \$6,000 to help move, move some
5 vehicles. When he got to the new FBI office, I am
6 aware that he received some money there, as well;
7 not to the tune of \$25,000. I think, all told, Eric
8 Duran received about \$45,000 or so from the FBI
9 between the two offices. As far as other benefits,
10 we mentioned what the Department of Corrections gave
11 him. I can't think of any more benefits, at least
12 from my handling of him.

13 Q. It was suggested from the opening
14 statements that the Government was responsible for
15 charges getting dropped against Mr. Duran. I want
16 to talk to you about charges in El Paso, for
17 starters.

18 A. Okay.

19 Q. Were you aware of charges pending against
20 Mr. Duran coming out of El Paso?

21 A. I became aware of it after he left New
22 Mexico, yes.

23 Q. How did it come up?

24 A. I'm not sure how much detail you want. I
25 can give you a pretty long story, but --

1 Q. Let me ask you this, to avoid --

2 THE COURT: Why don't you lead him through
3 this?

4 MR. CASTELLANO: Yes, sir.

5 BY MR. CASTELLANO:

6 Q. Is it fair to say he was working for the
7 FBI unrelated to this case in another part of the
8 country?

9 A. Yes.

10 Q. And related to that, was it important that
11 he not have any outstanding charges or warrants?

12 A. Yes.

13 Q. And when he was working for them, did the
14 issue of a warrant in El Paso surface?

15 A. Yes.

16 Q. And what happened to those charges?

17 A. Ultimately the district attorney's office
18 in El Paso dismissed that arrest warrant.

19 Q. And what efforts were you doing to clear
20 up those charges for Mr. Duran?

21 A. I don't clear up charges. I didn't clear
22 up his charges.

23 Q. And -- well, what steps were you going to
24 take to present him to El Paso authorities to hold
25 him responsible or let them figure out what they

1 were going to do with those charges?

2 A. I offered to pick him up on his warrant,
3 fly him to El Paso, and deliver him to the DA's
4 office.

5 Q. If you recall, approximately how old were
6 those charges?

7 A. Close to 20 years.

8 Q. So after the DA's office looked at the
9 case, was the case dismissed?

10 A. Yes.

11 Q. Did you ask their office to dismiss those
12 charges?

13 A. I didn't. And I don't think I ever had a
14 single conversation with anyone in their office.

15 Q. Now, when it comes to any conduct out of
16 the state, did you have a say in dismissal of any
17 charges if he got into trouble up there?

18 A. No.

19 Q. Now, are you aware of a situation where he
20 was found in a vehicle with a firearm?

21 A. Yes.

22 Q. What did you do in response to learning
23 that information?

24 A. I asked the New Mexico Department of
25 Corrections to issue a warrant for him for parole

1 violation, to bring him back to New Mexico. I also
2 reached out to an FBI agent in the city he was in
3 and asked them to open a case on him and charge him
4 with a federal violation of being a felon in
5 possession of a firearm.

6 Q. What steps did you take to further that
7 investigation against Eric Duran?

8 A. As soon as Duran got back here to New
9 Mexico, I had obtained a search warrant to swab the
10 inside of his mouth for DNA. I executed it on him
11 as soon as he arrived. And I sent that swab to the
12 FBI in -- are we not saying locations?

13 Q. Well, in other words, did you send the
14 swab for DNA testing?

15 A. I did not. I sent it to the case agent,
16 the new FBI case agent that I contacted, so that
17 they could submit it with their case.

18 Q. As far as you know, are you pending
19 results to see if the firearm in that case has Eric
20 Duran's DNA on it?

21 A. Yes, we're waiting for DNA and the
22 fingerprints.

23 Q. Let me ask you about some of the other
24 cooperators in the case. At some point in time were
25 some of the cooperators housed in the same facility?

1 A. Yes.

2 Q. For their safety, were you trying to house
3 them away from other inmates?

4 A. Yes.

5 Q. At that point in time, was it known that
6 they were cooperating with the Government?

7 A. Yes.

8 Q. So under those circumstances, were some of
9 those inmates allowed additional privileges?

10 A. Yes.

11 Q. What were some of those privileges?

12 A. They got extra tier time, or time to be
13 outside their cells and be in the bigger area. I
14 think we saw some photos earlier where it shows some
15 tables, and there are board games and stuff out
16 there. So they had extra tier time. They were
17 afforded extra phone calls so they could call family
18 and friends. I don't know how that translates to
19 calling attorneys. And they got more family visits.

20 Q. Do you know what a contact visit is?

21 A. I believe so.

22 Q. Or at least, do you know, if an inmate has
23 a contact visit with family, are you aware of
24 whether or not there are rules on how much contact
25 is allowed?

1 A. Yes.

2 Q. At some point did you become aware that
3 some of those cooperators broke those rules?

4 A. Yes.

5 Q. And in what context did they break those
6 rules?

7 A. They had more contact than they were
8 allowed.

9 Q. And does that include sexual contact in
10 some cases?

11 A. Yes.

12 Q. At that point in time, until that
13 happened, were those some of the inmates you were
14 putting money on their books?

15 A. Yes.

16 Q. Did they get in trouble for that contact
17 with, I'll say, females?

18 A. Yes.

19 Q. What happened -- what were the
20 consequences, once they broke those rules, with the
21 contact visits?

22 A. I closed them as informants. I advised
23 them of that.

24 Q. Did that mean you quit paying them any
25 money, even that \$50 a month?

1 A. Yes. I -- for many months, in some cases
2 almost a year, I had no contact with them and would
3 only interact with the attorneys. I know that two
4 of the men were not housed there on federal charges.
5 They were there on state charges, and the State
6 locked them down in isolation for, like, nine
7 months.

8 MR. VILLA: Objection, hearsay.

9 THE COURT: Lay a foundation if he's going
10 to testify to that. Are you wanting to elicit this?

11 MR. CASTELLANO: Yes, Your Honor. I'm
12 intending to elicit consequences to these
13 cooperators.

14 THE COURT: Lay a foundation as to how he
15 knows about the consequences.

16 BY MR. CASTELLANO:

17 Q. In terms of the consequences, you said in
18 some cases you didn't have contact with them for
19 some time?

20 A. Yes, I limited it to only having contact
21 with them through their attorneys.

22 Q. Then were you made aware whether they were
23 moved to other facilities?

24 MR. VILLA: Objection. Calls for hearsay.

25 THE COURT: Well, you're going to have to

1 lay some foundation before I allow him to answer
2 these questions as to how he knows this. If he just
3 got it from the Corrections Department, I'll have to
4 exclude it.

5 BY MR. CASTELLANO:

6 Q. Where were they housed at the point that
7 they were getting contact visits?

8 A. The North facility, L pod, in Santa Fe.

9 Q. And so were there times when you would go
10 up there to check on them and you would see them
11 there?

12 A. Yes. I was there a couple times a month.

13 Q. And after they got in trouble, did you see
14 them there anymore?

15 A. No. They were transferred.

16 Q. Now, in terms of the phase 1 and phase 2,
17 let me return to that part of the investigation for
18 a bit. Did you eventually have a phase 3?

19 A. Yes.

20 Q. What was the purpose of phase 3?

21 A. It was to address several threats to
22 cooperators, witnesses.

23 Q. And in relation to that, did you then once
24 again begin investigating and executing warrants at
25 people's homes?

1 A. Yes. I wrote 12 federal search warrants
2 and then four probation parole searches were also
3 conducted.

4 Q. What did you recover as a result of the
5 warrants in phase 3?

6 MR. LOWRY: Objection, Your Honor. How is
7 this relevant?

8 THE COURT: Overruled. I think it's
9 relevant.

10 A. We collected a lot of the usual stuff we
11 do during search warrants: Drugs, currency -- I
12 think we seized 11 firearms during the searches, and
13 additional information related to the SNM.

14 BY MR. CASTELLANO:

15 Q. In addition to any state inmates, did you
16 then conduct any searches of any federal inmates'
17 cells? You, or have other people do it?

18 A. Yes.

19 Q. Who was that?

20 A. A federal inmate by the name of Frankie
21 Gallegos, or Frankie G, who was housed at the United
22 States Bureau of Prisons facility in Beaumont,
23 Texas.

24 Q. And what relation does he have to any SNM
25 Gang members in New Mexico?

1 A. He has two brothers who are also SNM
2 members that we've arrested.

3 Q. Can you tell the members of the jury
4 whether those brothers are charged in another part
5 of this case?

6 A. They are.

7 Q. With what type of conduct?

8 A. One brother is charged with two
9 violent-crime-in-aid-of-racketeering murders. And
10 the second brother -- excuse me. He has more
11 charges. He also has been charged with
12 violent-crime-in-aid-of-racketeering attempted
13 murder, assault causing bodily injury, and
14 intimidation of a victim or witness.

15 The second brother has been charged in one
16 violent-crime-in-aid-of-racketeering murder.

17 Q. In terms of the law enforcement techniques
18 employed in this case, can you tell us what a
19 reversal operation is?

20 A. Yes. That's when we, the law enforcement,
21 pose as bad guys and we sell the gun or the drugs or
22 something illegal to someone.

23 Q. Did you conduct those type of operations
24 in relation to this overall investigation?

25 A. Yes, on three occasions.

1 Q. And on that occasion, was the target of
2 that investigation seeking anything?

3 A. Yes.

4 Q. What was that person or those persons
5 seeking?

6 A. Guns.

7 Q. Did the FBI provide -- in each of those
8 three instances, did the FBI, through an undercover
9 person, provide firearms to those people?

10 A. Yes.

11 Q. And what happened once the firearm was
12 delivered?

13 A. An FBI SWAT team hit their house and
14 arrested them and recovered a gun.

15 Q. How quickly after the gun was delivered?

16 A. We did it three times. The longest period
17 of time that went by was probably two minutes. The
18 shortest was 30 seconds. The FBI SWAT teams were in
19 vans parked down the road, around the corner.

20 Q. And before the FBI delivered those
21 firearms to those people, can you say whether or not
22 they were operational, whether they could fire
23 bullets?

24 A. They could function, but they could not
25 fire bullets.

1 Q. Why not?

2 A. The FBI shortened the firing pin just a
3 couple of millimeters so it appeared to work but it
4 wouldn't strike the primer of the bullet.

5 Q. So overall, if you recall, approximately
6 how many murders have been charged in the overall
7 investigation?

8 A. Nine.

9 Q. In addition to any proactive approaches
10 for safety purposes, what have you and the other
11 agents been doing in terms of approaching people
12 coming out of the jail or prison?

13 A. Every SNM member that comes out of a
14 federal prison or a state prison, myself -- usually
15 myself or another FBI agent is at their parole
16 office to meet them when they check in with their
17 initial check-in with their parole officer.

18 Q. And what is the purpose of doing that?

19 A. Twofold. Every one of them has been aware
20 of the fact that the FBI has been picking up the SNM
21 members. It's to introduce myself to them, ask them
22 to gauge where they're at; are they going to stay
23 active, or are they done. And quite frankly, it's
24 to let them know that not only do they have the
25 conditions of their parole, but if they're going to

1 continue to be gang members in New Mexico, we're
2 going to keep an eye on them and we're going to be
3 after them.

4 Q. Now, we talked about the use of informants
5 and -- including the prison facilities. What were
6 your options in terms of investigating inside the
7 prison? In other words, what were your options in
8 terms of putting an undercover agent into the prison
9 to record the defendants in this case?

10 A. Putting an undercover police officer, FBI
11 agent in a prison setting like that is actually not
12 an option.

13 Q. Why not?

14 A. For a number of reasons. Specific to this
15 case, I mean, the SNM members' resumes were decades
16 in the making. To have an undercover agent to just
17 come in, ask to be housed in their pod, to live with
18 them and try to befriend them, there were -- it was
19 not only unlikely to succeed, but there were just
20 way too many risks with that, not only in failing
21 the case; I think they'd smell that out a mile away.
22 But it would be too dangerous for an agent to have
23 to live in there without -- it's against all of our
24 protocols for undercover operations. We have no
25 ability to rescue them. We have no ability to

1 really monitor it. And let alone, what we're
2 exposing the agent to, to lock him up in a prison
3 for a long period of time to try to infiltrate a
4 gang -- it just wouldn't work.

5 Q. In other words, for example, if you were
6 trying to get an undercover officer into prison to
7 infiltrate a gang, without any specifics, would you
8 be concerned about anything the gang might ask him
9 to do to become a member?

10 A. Absolutely.

11 Q. Or anything to do on behalf of the gang to
12 further their purposes?

13 A. Absolutely.

14 Q. Could you allow an undercover agent to do
15 anything like that if it involves something illegal?

16 A. No.

17 Q. So in these circumstances, even though we
18 had problems with some of these informants, did you
19 feel it was necessary to use them because of their
20 relationships to the defendants in this case for the
21 purpose of capturing other evidence?

22 A. Yes.

23 MR. CASTELLANO: May I have a moment, Your
24 Honor?

25 THE COURT: You may.

1 MR. CASTELLANO: Thank you, Your Honor.

2 THE COURT: Mr. Castellano.

3 BY MR. CASTELLANO:

4 Q. Turning back to the topic of informants
5 and cooperators, are you aware that in this case
6 many of the defendants receive their discovery, all
7 the information in this case, on tablets?

8 A. Yes.

9 Q. And related to that topic, what, if any,
10 concerns did you have about paperwork being given to
11 any particular defendant in this case?

12 A. That it would enter the prison system or
13 the jails.

14 Q. So for example, if there was a report of
15 somebody who was cooperating, did you have concerns
16 that that information might be distributed
17 throughout a jail or prison facility?

18 A. Yes.

19 Q. At some point in time, were you made aware
20 of some of the cooperators in this case misusing the
21 tablets?

22 A. Yes.

23 Q. And what was the misuse that you were made
24 aware of?

25 A. I was told that they were able to access

1 the internet. One of the cooperators -- actually, I
2 was summoned to a meeting by the cooperators'
3 attorneys. I attended the meeting. The cooperator
4 told me that they could access the internet on the
5 tablets, which I didn't think possible. So I gave
6 them my email address and told them to email me.

7 Q. And was that done?

8 A. Yes. In fact, two of them emailed me
9 overnight.

10 Q. And as best as you knew from the
11 proceedings, was the internet function of the
12 tablets supposed to be taken off or disabled on the
13 tablets?

14 A. Yes.

15 Q. So then did you learn that somehow they
16 learned how to disable the tablet and do other
17 things with them?

18 A. Yes.

19 Q. And what were the types of things that
20 were done with the tablets?

21 A. They were able to send emails, access
22 Facebook, make accounts, and surf the internet, and
23 access pornography, and anything else that's on the
24 internet.

25 Q. And did they have authorization to do

1 anything like that with the tablets?

2 A. No.

3 Q. In other words, did you allow them to look
4 at pornography or access the internet with any of
5 those devices?

6 A. Absolutely not.

7 Q. And as a result of a misuse of the
8 tablets, were those tablets taken from them?

9 A. They were.

10 Q. And as far as you know, have those tablets
11 been returned?

12 A. The FBI has those tablets and is in the
13 process of turning them over to some of the defense
14 attorneys.

15 Q. Now, we talked generally about putting
16 money on cooperators' books. Were we talking in
17 general terms?

18 A. Yes.

19 Q. As to -- in other words, do you have
20 documentation which shows the exact amount of the
21 benefits provided to each of the cooperators?

22 A. Yes.

23 Q. I just want to correct something possibly.
24 Do you recall if Gerald Archuleta was charged in
25 phase 1 with the Julian Romero assault? He's got an

1 arrest dated April, but do you recall if there was a
2 warrant outstanding before he was arrested in
3 Tennessee?

4 A. He was arrested right away. But no knock
5 on the Marshal Service; it just takes a while for a
6 defendant to get here. So --

7 THE COURT: Mr. Castellano, are you about
8 done, or would this be a good time to take our
9 afternoon break?

10 MR. CASTELLANO: Yes. It would be a good
11 place for a break, Your Honor.

12 THE COURT: All right.

13 Since we're taking our first afternoon
14 break during the evidentiary portion of the trial,
15 I'm going to remind the jury of a few things that
16 are especially important. Until the trial is
17 completed, you're not to discuss the case, this
18 case, with anyone, whether it's members of your
19 family, people involved in the trial, or anyone
20 else; and that includes your fellow jurors. If
21 anyone approaches you and tries to discuss the trial
22 with you, please let me know immediately.

23 Also, don't listen to any news reports of
24 the trial, and don't get on the internet and do
25 research for the purposes of this case. And

1 remember that you must not talk about anything with
2 anybody that's involved in the trial, even if
3 doesn't have anything to do with the trial.

4 If you need to speak with me, give a note
5 to one of the court security officers or Ms.
6 Standridge. Again, I'm going to keep repeating
7 these today, but we'll start lightening them up
8 tomorrow as we begin to get in a groove here.

9 I appreciate your hard work. We'll be
10 back in about 15 minutes. All rise.

11 (The jury left the courtroom.)

12 THE COURT: All right. We'll be in recess
13 for about 15 minutes.

14 (The Court was in recess.)

15 THE COURT: All right. While Ms.
16 Standridge is lining up the jury, do you want to
17 finish, Ms. Fox-Young?

18 MR. VILLA: Your Honor --

19 THE COURT: It's all right. If she's not
20 here, we'll finish it another time, unless you want
21 to do it.

22 MR. VILLA: Well, I can add a couple of
23 things.

24 THE COURT: Can you tell me what your end
25 goal is? I'm not trying to cut off this, but what

1 are you going to be requesting?

2 MR. VILLA: We ask for the remedy that the
3 Court strike Billy Cordova from testifying as a
4 witness, because this 302, which I alluded to on
5 Friday -- so it's part of the record on Friday -- I
6 gave the doc number that was attached to -- was from
7 2016, has clearly exculpatory information about Mr.
8 Cordova committing a murder, at least Giglio
9 information, that wasn't produced until late
10 January, mid-January, with the Jencks disclosure.
11 It's not Jencks material. It's Giglio material.

12 And this is part of a pattern by the
13 United States that we've been pointing out in which
14 they have not produced Giglio material, and this
15 Court ordered it to be produced back in the spring.

16 THE COURT: Do this for me: To my ears,
17 it sounds kind of academic at this point. It may
18 not be. Y'all may be having some prejudice or
19 something like that. But it's sounding academic.
20 Why don't you think about it. If you can point to
21 some prejudice in a more concrete way, I'm ears for
22 it. But it sounds to me -- it's too academic for me
23 to impose such a drastic remedy.

24 MR. VILLA: Well, your Honor, I don't
25 think it's such a drastic remedy. We're talking

1 about one witness. And when you have a pattern of
2 conduct of violating the Court's rules and the
3 Court's orders, it's not academic. It ensures that
4 the Government complies with their constitutional
5 duty.

6 THE COURT: Well, I certainly want them to
7 do it. And I think I got a pattern of riding them
8 pretty hard over the last year and a half. But if
9 you can put some meat on these bones, then I can
10 listen to it a little better. But it seems to me
11 it's a pretty severe remedy being requested for
12 something that I can't figure out how it's hurting
13 you right at the moment.

14 MR. BECK: And Your Honor, I'll point out
15 for the record --

16 THE COURT: Let me do this: Ms. Fox-Young
17 is back.

18 Did you want to add anything? I know you
19 were a little bit out of the room for Mr. Villa, but
20 I cut you off a little bit earlier, so I wanted to
21 let you finish up.

22 MS. FOX-YOUNG: Thank you, Judge. I've
23 looked back at the real-time. I think the best
24 thing would be to submit a letter to the Court. I
25 know you want to get the jury back in here, and I

1 can fill in some of the blanks.

2 THE COURT: Okay. All rise.

3 (The jury entered the courtroom.)

4 THE COURT: All right. Everyone be
5 seated.

6 All right. Mr. Acee, I'll remind you that
7 you're still under oath.

8 Mr. Castellano --

9 Wait. We need somebody else? It's never
10 good to lose a juror, is it? People are going to
11 think I can't count that high.

12 All right. Mr. Acee, I'll remind you that
13 you're still under oath.

14 Mr. Castellano, if you wish to continue
15 your direct examination of Mr. Acee, you may do so
16 at this time.

17 MR. CASTELLANO: Thank you, Your Honor.

18 THE COURT: Mr. Castellano.

19 BY MR. CASTELLANO:

20 Q. Agent Acee, I think we were just about
21 winding down our direct examination, but I want to
22 make sure I have some of these players covered in
23 the charge in the Molina murder, or implicated in
24 the murder, or the conspiracy to murder. So far,
25 you've talked about Defendant Baca, Defendant

1 Sanchez, Defendant Perez, Defendant Herrera. You
2 mentioned in passing David Calbert --

3 A. Yes.

4 Q. -- as well as Mr. Rodriguez. So when this
5 case started with the State, is it your recollection
6 it was three defendants charged when it was a state
7 case?

8 A. Yes.

9 Q. And you also referenced Mr. Armenta and
10 Mr. Montoya; is that correct?

11 A. Those are two of the other ones charged in
12 the state case.

13 Q. I want to also ask you if there was
14 another person implicated or somehow involved, and
15 is that a person named Lupe Urquizo?

16 A. Yes.

17 Q. So is it fair to say the number went from
18 nine -- well, three to approximately nine people
19 now, somehow implicated or touching on the Molina
20 murder?

21 A. Yes.

22 MR. CASTELLANO: I pass the witness, Your
23 Honor.

24 THE COURT: Thank you, Mr. Castellano.

25 Ms. Jacks, are you going to examine first?

1 MS. JACKS: I think counsel for Mr. Baca
2 is going first, and I'm last.

3 THE COURT: Okay. I'll get this order
4 down here.

5 All right. Mr. Lowry, you have
6 cross-examination of Mr. Acee?

7 MR. LOWRY: Thank you, Your Honor.

8 THE COURT: Mr. Lowry.

9 CROSS-EXAMINATION

10 BY MR. LOWRY:

11 Q. Good afternoon, Special Agent.

12 A. Good afternoon.

13 Q. Special Agent Acee, I'd like to take off
14 where we sort of left off with benefits. Okay?

15 A. Okay.

16 Q. You had suggested that you thought
17 Mr. Duran received about \$45,000 in benefits, if I
18 understood you correctly.

19 A. Yes, sir.

20 MR. LOWRY: May I approach the witness,
21 Your Honor?

22 THE COURT: You may.

23 BY MR. LOWRY:

24 Q. I'm handing you an FBI document. Would
25 you review that briefly?

1 A. Yes, sir.

2 Q. Does that refresh your recollection of how
3 much Mr. Duran actually received?

4 A. I may have missed it. That looked like a
5 \$1500 payment? Was there an aggregate total?

6 Q. There was an aggregate total.

7 A. I'm sorry, I missed that.

8 MR. LOWRY: May I approach again, Your
9 Honor?

10 THE COURT: You may.

11 A. Yes, sir, on page 1 there. Thank you.

12 BY MR. LOWRY:

13 Q. What was the aggregate total?

14 A. It was \$46,200 -- was it 97, I think?

15 Q. 97 dollars.

16 A. Okay.

17 Q. That was as of November 1st, 2017?

18 A. Yes, sir.

19 Q. And this was --

20 THE COURT: Mr. Lowry, louder. Be louder.
21 You're not going to be too loud for us.

22 Q. And this would be the official
23 record-keeping process you were talking about
24 earlier --

25 A. Yes, sir.

1 Q. -- that helped you with that project?
2 What about the other individuals involved with
3 benefits? How did you make the decision who got how
4 much?

5 A. There were some variables. Largely, the
6 folks that were incarcerated got about -- what
7 averages to about \$50 a month. The guys on the
8 streets, the payments were a little bit different.

9 Q. Would there be any special occasions that
10 caused you to give substantial sums of money to an
11 individual?

12 A. Yes.

13 Q. And what would those occasions be?

14 A. Outside of, like, relocation-type things?

15 Q. Yes.

16 A. Well, if some of the informants would
17 travel greater distances to meet with us, because it
18 was a statewide case. So there were some
19 circumstances where some informants had car issues.
20 And we're not in the practice of buying people cars,
21 so we would help if they had a flat tire, buying
22 them a tire, or things along those lines, putting
23 gas in their car.

24 Q. Like Mario Montoya, for instance. You
25 provided him with \$1,601.50 for vehicle repair?

1 A. Yes.

2 Q. Do you recall what that was, what type of
3 repair that was?

4 A. Yes.

5 Q. What was it?

6 A. For an RV that he was leaving New Mexico
7 in.

8 Q. Individuals like Javier Alonso would only
9 get \$400. Why would he only get \$400 compared to
10 others?

11 A. He started cooperating much later.

12 Q. Now, you were present in these debriefs
13 with the U.S. Attorney's office when they came in to
14 talk?

15 A. Yes.

16 Q. And another type of benefit might be the
17 benefit of not getting prosecuted; correct?

18 A. I agree that's a benefit.

19 Q. And that kind of benefit is not going to
20 show up on a financial report like that, is it?

21 A. No, sir.

22 Q. But that would be a fairly significant
23 benefit?

24 A. Yes.

25 Q. You talked a little bit about Gerald

1 Archuleta?

2 A. Yes.

3 Q. And you debriefed with Gerald Archuleta?

4 A. Yes.

5 Q. And Gerald Archuleta admitted to you that
6 he wanted to kill Julian Romero?

7 A. Yes.

8 Q. But you didn't prosecute him for
9 conspiracy to commit murder, did you?

10 A. I think I suggested that, but ultimately,
11 of course, I defer to the U.S. Attorney's Office.
12 And sometimes my reading of a statute isn't their
13 reading of a statute.

14 Q. All right. But he did talk to other
15 people about wanting Julian Romero killed, didn't
16 he?

17 A. Absolutely, yeah.

18 Q. Because Julian Romero stole his wife away
19 from him?

20 A. That's correct.

21 Q. And he had the motive?

22 A. Yes.

23 Q. He had the opportunity?

24 A. Yeah.

25 Q. I mean, he was the leader of SNM?

1 A. You and I probably disagree on who the
2 leader is.

3 Q. Well, would you -- well, Mr. Baca was out
4 of New Mexico for many years.

5 A. That is true.

6 Q. And Gerald Archuleta was the man in town,
7 according to your investigation.

8 A. He was one of the leaders.

9 Q. So one of the leaders?

10 A. Yes.

11 Q. So let's talk about that for a second.
12 What do you mean by "one of the leaders"?

13 A. In Mr. Baca's absence, that doesn't
14 completely strip him of leadership; but because he's
15 not on the scene, he's not in the state, other
16 leaders have stepped up. And over time, leadership
17 has changed. So in my mind, there has been
18 certainly more than one leader in the gang.

19 Q. But let me get to the heart of this. When
20 you go to interview people, you ask them point-blank
21 which faction you're in. "Are you in the Gerald
22 Archuleta camp or are you in the Julian Romero
23 camp?"

24 A. That is one of the questions I usually
25 ask.

1 Q. That's because there are two different
2 factions, in your mind?

3 A. Arguably three, and that doesn't count the
4 feds.

5 Q. Right. And the federal SNM -- is that
6 part of the SNM?

7 A. Yes, under a different organizational
8 structure or leadership.

9 Q. We might not be seeing eye to eye. When I
10 say "the federal SNM," I'm talking about the Mario
11 Montoyas, the Eric Durans.

12 A. Oh. I'm referring to the guys that are in
13 the Federal Bureau of Prisons. Sorry.

14 Q. But in your mind's eye, there are at least
15 two factions?

16 A. Today, yes.

17 Q. And they would be characterized by the
18 people that follow Julian Romero and the people that
19 follow Gerald Archuleta?

20 A. No, sir. I think over history, that's
21 been -- there have been those issues. As we sit
22 here today, if you're asking me factions, I think
23 there is a state and I think there is a federal.

24 Q. Do you recall giving testimony -- well,
25 let me put it this way. When you take an oath to

1 testify in a courtroom like this, you're here to
2 tell the truth?

3 A. Of course.

4 Q. And you're going to do the best of your
5 ability to make sure you get it right?

6 A. Yes, sir.

7 Q. Every time you raise your hand and take
8 that oath?

9 A. That's right.

10 Q. And you testified in front of the grand
11 jury in this matter, didn't you?

12 A. Yes.

13 Q. And you say -- and in your grand jury
14 testimony, you said that the SNM was divided. And
15 you said to the grand jury, "I do say, when I
16 interview these guys, 'Which side do you fall on?
17 Gerald or Julian?' And the gang is still kind of
18 divided, to this day."

19 A. Yes. There I'm referring to kind of
20 opinions and what's happened within the gang. There
21 is definitely a split, and there are those that
22 sided with Gerald and those that sided with Julian.
23 I agree.

24 Q. The leaders of the SNM.

25 A. They are both -- well, they both were

1 leaders at one time, yes.

2 Q. You made this statement on April 21, 2016?

3 A. I believe you.

4 Q. Mr. Baca was incarcerated?

5 A. Yes.

6 Q. So on April 21, 2016, you told the grand
7 jury that in your mind Gerald Archuleta or Julian
8 Romero were the two leaders of the SNM?

9 A. That's what I --

10 Q. Pardon?

11 A. You're telling me that's what it says?

12 MR. LOWRY: May I approach, Your Honor?

13 THE COURT: You may.

14 MR. CASTELLANO: Your Honor, may we have a
15 page reference, please, to the transcript?

16 MR. LOWRY: Sure.

17 A. On the top, it's page 108.

18 Sir, in this, I'm talking about the
19 history of the SNM, and why there was a split over
20 these two men, because they were battling over a
21 woman. I'm not talking about leadership.

22 BY MR. LOWRY:

23 Q. Well, you do say that the SNM is divided
24 to this day?

25 A. I guess that's not in the highlighted

1 part. Let me keep reading. Yes, I see that.

2 Q. And that day was April 21, 2016?

3 A. I believe it was, yes.

4 MR. LOWRY: May I approach?

5 THE COURT: You may.

6 BY MR. LOWRY:

7 Q. And according to your grand jury
8 testimony, SNM is a blood in, blood out gang?

9 A. Yes.

10 Q. That means once you've signed up, there
11 is -- only death gets you out?

12 A. It depends who in the gang you ask.

13 Q. And so if it depends on who you ask, what
14 are the rules?

15 A. There's a lot of contradictions in the
16 SNM, I've discovered.

17 Q. A lot of contradiction or a lot of
18 confusion?

19 A. Contradictions.

20 MR. CASTELLANO: Your Honor, at this point
21 I'm going to object. I'm not sure if the attorney
22 is trying to elicit expert testimony. If not, we're
23 eliciting hearsay.

24 MR. LOWRY: No, I'm not, Your Honor.

25 MR. CASTELLANO: I would object to

1 hearsay, Your Honor.

2 THE COURT: Well, don't elicit hearsay.

3 BY MR. LOWRY:

4 Q. So back to the benefits. We were talking
5 about Eric Duran, and Mr. Castellano asked you about
6 Eric Duran. Were you aware of any calls made on his
7 behalf when he got in trouble with the law?

8 A. No. There were inquiries, but not what
9 I'd characterize as calls on his behalf.

10 Q. When you realized he was in trouble, did
11 you or anybody from the United States Attorney's
12 Office for the District of New Mexico contact any of
13 the prosecuting agencies?

14 A. Yes.

15 Q. In which cases did they contact the
16 prosecuting agencies?

17 A. The first instance was when we learned
18 there was an outstanding warrant in El Paso for
19 Duran, but it was not in his name; it was in an
20 alias name from 20 years earlier. The United States
21 Attorney's Office let the district attorney's office
22 in El Paso know that we could deliver him, and we
23 would; and I was told as soon as they want him, go
24 pick him up and take him down there, and made plans
25 to do that.

1 The second time -- well, I had interaction
2 with the district attorney's office in Multnomah
3 County, when I learned that Duran picked up some
4 charges there.

5 And then the only other instance I can
6 think of is -- well, related to that, I also had
7 interaction with the United States Attorney's Office
8 for the District of Oregon, again related to those
9 charges.

10 Q. And those charges were never pursued?

11 A. I don't agree.

12 Q. Well, are you aware that if we're talking
13 about the November 11 incident where Mr. Duran was
14 caught in a vehicle with a pistol and with heroin,
15 didn't the district attorney in Washington State
16 dismiss -- or Portland dismiss those charges?

17 A. Well, they did once they learned we were
18 going to pick them up. But my understanding, in
19 talking with the deputy DA assigned to the case,
20 they have similar rules to New Mexico where they
21 have to present to grand jury in a certain amount of
22 time. They were intending to go to the grand jury.
23 I don't know all the legal terms. I know there was
24 some delay in collecting evidence before they were
25 ready to present the case.

1 Q. Then why did the driver of that car
2 already go to trial and was convicted?

3 MR. CASTELLANO: Objection, calls for
4 hearsay.

5 THE COURT: Well, ask him if he knows.
6 BY MR. LOWRY:

7 Q. Do you know why?

8 A. No, sir --

9 THE COURT: Just answer yes or no.

10 A. No.

11 Q. You were talking about how swiftly the
12 federal government could respond to situations
13 regarding the gun pickups in the reverse case?

14 A. Yes.

15 Q. Were those people charged?

16 A. Yes.

17 Q. Quickly?

18 A. Well, they were arrested quickly.

19 Q. Well, they were probably charged very soon
20 after their arrest.

21 A. I did criminal complaints, yes.

22 Q. What's to prevent you from filing -- well,
23 what's to prevent the FBI or the Department of
24 Justice from filing a criminal complaint against
25 Mr. Duran in Portland?

1 A. I pushed for that. But the U.S.
2 Attorney's Office there wanted results of
3 fingerprints or DNA.

4 Q. There are no charges pending against
5 Mr. Duran?

6 A. He hasn't been charged yet, but it's
7 pending.

8 Q. So you did contact state prosecutorial
9 agencies there to talk to them about Mr. Duran's
10 status?

11 A. Yes, sir. I just want to say I wouldn't
12 characterize it as on his behalf.

13 Q. Okay. Then why would you contact them at
14 all?

15 A. I wanted them to know that he needed to be
16 charged, because I had the same concern when I saw
17 that he hadn't yet been -- or he had been released.
18 I wanted to know why he had been released.

19 Q. Given Mr. Duran's behavior over the
20 summer, why did the FBI sign him up at the beginning
21 of November for another confidential human source
22 contract?

23 A. I'm not following, sir.

24 Q. Okay. Well are you aware that your
25 colleagues in the Northwest signed a -- well, let me

1 back up for a second. Locally here, the local FBI
2 signed Mr. Duran up on March 25, 2015, to be a CHS,
3 a confidential human source?

4 A. That's what our paperwork indicates. I
5 believe you. I didn't meet him until August.

6 Q. Right. Because somebody else in your
7 department was handling his case?

8 A. Yes, sir, and as such, I wouldn't have
9 access to his information, like his records. So I'm
10 not sure of the exact date.

11 Q. You wouldn't have access to his records
12 once you took over his handling, his file?

13 A. I would then, yes.

14 Q. And would you have reviewed them just to
15 see how he did, how he performed?

16 A. No. I'd ask the agent.

17 Q. And what was the response you got? What
18 was the feedback you got about his ability to do the
19 job?

20 A. That agent was Katie Brusuelas. She told
21 me he had phenomenal access to the SNM, was housed
22 up at the Level 6 with some of the leaders, and that
23 he was willing to testify and make recordings. She
24 told me she had deployed a device, and he was in the
25 process of making recordings. And I thought that

1 sounded promising.

2 Q. And you reinstituted when you signed him
3 up in the fall to keep recording?

4 A. To be clear, it's just a transfer. I
5 didn't resign him. He was transferred to me. I met
6 with him, questioned him about his access, his
7 abilities, and yes, I deployed a different recording
8 device or devices with him.

9 Q. Because he struggled with the first one.

10 A. I don't know that I blame him. I blame
11 the device, and frankly -- I'll blame the device.

12 Q. Now, when you talked to Mr. Duran about
13 using the device, you didn't give him a lot of
14 instruction, did you?

15 A. No.

16 Q. Okay. One thing you did tell Mr. Duran is
17 that he needed to get the recording -- he needed to
18 get somebody speaking on the tape for you to believe
19 it happened?

20 A. Yes, I typically tell all the informants
21 that; there needs to be a recording.

22 Q. And that's because you want solid
23 evidence?

24 A. Yeah. I want to corroborate what they're
25 telling me. I want to hear it myself, yes.

1 Q. Right. And if you can't hear it for
2 yourself, it's like it never happened?

3 A. I just have to corroborate it through
4 other means. I prefer the recording, but if I don't
5 get the recording, we keep investigating and try to
6 corroborate it through other means.

7 Q. Right. But you testified earlier in this
8 case before this jury sat down, didn't you?

9 A. Oh, like pretrial hearings?

10 Q. Correct.

11 A. Yes, sir, I did.

12 Q. And during those pretrial hearings you
13 testified, "Well, if it's not recorded, the
14 conversation, in my mind, didn't happen."

15 A. That's what I tell the informants, yes.

16 Q. You want it on tape.

17 A. Yes.

18 Q. Is that because you're concerned about the
19 honesty of the people you work with when you work
20 with inmates in the Department of Corrections?

21 A. Sometimes.

22 Q. You're concerned about their integrity?

23 A. That is sometimes a concern that I have,
24 especially if I'm just meeting them and I haven't
25 tested them yet.

1 Q. And you hadn't really met Mr. Duran
2 before?

3 A. No. I first met him in August.

4 Q. And that's when he told you that Mr. Baca
5 was eager to kill the secretary, Gregg Marcantel?

6 A. I don't know that he told me that. I'd
7 have to go back and look at the debrief reports, but
8 he subsequently told me that, for sure.

9 MR. LOWRY: One moment, Your Honor.

10 THE COURT: Certainly.

11 MR. LOWRY: I'll pass the witness, Your
12 Honor.

13 THE COURT: Thank you, Mr. Lowry.

14 Mr. Maynard, are you next? Okay, Mr.
15 Maynard.

16 CROSS-EXAMINATION

17 BY MR. MAYNARD:

18 Q. Good afternoon, Mr. Acee.

19 A. Good afternoon.

20 Q. I'd like to clarify a few items that you
21 raised on direct examination to make sure the jury
22 understands as clearly as possible your testimony.

23 You mentioned at one point in the direct
24 examination that there were some other accusations
25 of other murders involved in SNM.

1 A. Yes, sir.

2 Q. Okay. Now, Mr. Herrera is not charged in
3 any of those, is he? Carlos Herrera?

4 A. No, sir.

5 Q. All right. Now, you mentioned reference
6 to some state cases, especially, of course, Mr.
7 Jerry -- the two Jerrys, Jerry Armenta and Montoya?

8 A. Yes, sir.

9 Q. And I think Tim Martinez also was charged.

10 A. Mario Rodriguez.

11 Q. Mario Rodriguez. I'm sorry. Now, Carlos
12 Herrera was not charged in any of that, was he?

13 A. No, sir.

14 Q. All right. Now, you testified also that
15 during the investigation, after the murder of Javier
16 Molina in 2014, several people that Corrections, at
17 least, felt were in some kind of influential or
18 leadership ability were sent north or sent out of
19 state, some of them.

20 A. Three people were sent out of state, and
21 several were sent to the North facility in Santa Fe.

22 Q. And out of the Southern -- out of the
23 facility from Las Cruces?

24 A. Yes, sir.

25 Q. And some were sent to other places east

1 and west, or were they all sent to PNM, if you know?
2 If you recall.

3 A. I'm not sure. I know that three were sent
4 out of state, and a group was sent north. But I
5 couldn't tell you exactly who.

6 Q. Now, Mr. Herrera was not one of any of
7 those that was sent out of state, was he?

8 A. He was not.

9 Q. Now, you also mentioned briefly -- you
10 made reference to the structure or politics,
11 disagreements, for instance, between Romero and the
12 Archuleta political parties, whatever.

13 A. Good description, sir. Yes.

14 Q. Now, would it be at least -- it wouldn't
15 be unfair to say the origin of that dispute was over
16 a woman?

17 A. Correct.

18 Q. And if you look through your investigation
19 and disagreements between inmates, you run into
20 rivalries, you run into resentments over women, over
21 debts, over respect, et cetera; is that a fair
22 summary?

23 A. Yes, sir.

24 Q. And it's not so easy to figure out, well,
25 which one is an SNM issue and which one is an issue

1 between a couple of inmates and their friends?

2 A. It depends.

3 Q. Right. It depends on a lot of facts.

4 A. Yes, sir.

5 Q. I mean, you can't do a roll call, like
6 in -- at the State House, legislature in Santa Fe,
7 and say who voted for what?

8 A. Correct.

9 Q. And a lot of that depends upon rumors.

10 A. I think rumors play a factor in politics.

11 Q. Right. Politics. And you mentioned back
12 in 2014, around the time -- and before the time
13 Mr. Molina was killed, there was some dissention,
14 some politics and dissension within the wings,
15 within the party, so to speak, if you want to
16 call --

17 MR. CASTELLANO: Objection. I'm sorry.
18 Calls for hearsay.

19 THE COURT: Why don't you lay a foundation
20 as to, A, does he know it; and B, where he got the
21 information, so he can --

22 BY MR. MAYNARD:

23 Q. You interviewed a lot of people that were
24 in and out of custody with the Corrections
25 Department or on the street?

1 A. Yes, sir.

2 Q. People with tattoos that -- you saw them
3 during the earlier direct examination?

4 A. Tattoos very similar.

5 Q. People that, by all appearances, appear to
6 be, at one time or another, members of SNM?

7 A. Yes.

8 Q. Okay. And you ran into different opinions
9 about different issues?

10 A. Yes.

11 Q. And you have made reference to murders,
12 hits, during your testimony; correct?

13 A. Yes, sir.

14 Q. And the term "hit" is sort of a
15 colloquialism, sort of a jargon for a gang, for any
16 gang? It's informal English; correct?

17 A. Yes.

18 Q. It doesn't necessarily mean a murder. It
19 can mean a beating, it can mean a sanction of any
20 sort.

21 A. I think it can mean a murder or an
22 assault.

23 Q. Or an assault. Now, you gathered
24 information from various people that you felt were
25 at one time or another, or still were, SNM members.

1 And you went back and interviewed them on repeated
2 occasions.

3 A. Some would only talk to me once, or
4 wouldn't talk to me at all.

5 Q. That's true. That's fair.

6 A. Others, I interviewed more than once.

7 Q. And for instance, in preparation for this
8 trial, you talked to several just within the past
9 few weeks.

10 A. Primarily the attorneys did, but I was
11 present.

12 Q. Right. And they had been interviewed
13 before numerous times.

14 A. Some of them had.

15 Q. All right. Now, with respect to Mr.
16 Herrera, the issues relate to events that happened
17 almost three years ago, in 2014.

18 A. Yes, sir.

19 Q. And the witnesses have spoken with you or
20 other agents of the FBI on prior occasions. This is
21 not just the past couple of months.

22 A. Correct.

23 Q. And over time, they've been receiving
24 benefits, or certain privileges or expenses have
25 been covered for them; correct?

1 A. No. Some of them received benefits for
2 some of the time, but all of them have not received
3 benefits all of the time.

4 Q. I understand. Right. Now, would it be
5 fair to say that with some of these people that are
6 going to come in and testify today that with the
7 passage of time, they continue to come in with
8 additional details that they recall about 2014?

9 A. Well, there were more than -- yes, in some
10 cases there would be a second or third interview
11 with more details, something that they remembered
12 when they went back and thought about it more, yes.

13 Q. And while they thought about it more, many
14 of them have been housed together with each other.
15 Not all of them.

16 A. Well, I don't know that I'd say many of
17 them. I'll agree that some of them were, yes.

18 Q. They could exchange stories; they've heard
19 each other's recollections?

20 A. I don't know.

21 Q. You wouldn't know?

22 A. I don't know.

23 Q. But they had that opportunity.

24 A. If they had tier time together and chose
25 to talk about those sorts of things, they certainly

1 could have.

2 Q. In fact, you would expect them to talk
3 about this from time to time. They would have a lot
4 of time on their hands.

5 A. I don't know that I'd expect it, because
6 we told them not to. So I would hope that they
7 would follow our directions.

8 Q. Were there not occasions where they didn't
9 follow your directions?

10 A. Yes, sir.

11 Q. Not all of them, but a significant number
12 of them?

13 A. A few of them didn't follow my
14 instructions.

15 Q. Right. So you're not sure to what extent
16 they did or did not speak with each other?

17 A. No, sir.

18 Q. Talk with each other about their
19 contemplated testimony in the future?

20 A. No, sir.

21 MR. MAYNARD: May I have just a moment,
22 Your Honor?

23 THE COURT: Certainly.

24 BY MR. MAYNARD:

25 Q. Just a couple of other questions, Mr.

1 Acee. With respect to the wiring of a couple of
2 cooperators, you called them, they were in
3 possession -- in custody in the Corrections
4 Department at this time; correct?

5 A. Yes.

6 Q. And they were staying, according to the
7 plan, the investigation, next to Mr. Herrera. I'm
8 speaking about Mr. Cordova and Mr. Archuleta.

9 A. Yes, sir. They were.

10 Q. All right. Now, they were next to --
11 right adjacent to Carlos Herrera for a period of
12 several weeks, or at least a few weeks.

13 A. At least a few weeks. I had the dates
14 when we were doing the pretrial stuff, and I don't
15 recall them as I sit here today. But I agree it was
16 at least a couple of weeks.

17 Q. And they knew who they were to target to
18 try to elicit some relevant conversations --

19 A. Yes, sir.

20 Q. -- relevant about what happened on March 7
21 of 2014?

22 A. Correct.

23 Q. And they had the ability during this
24 period of time of a few weeks, with respect to each
25 other -- and this was about a year and a half,

1 almost two years ago, in 2016?

2 A. Correct.

3 Q. And they had control of the on-off button
4 for this recording device. They could turn it on
5 and off whenever they wanted to.

6 A. Yes.

7 Q. And so you have no way of knowing for sure
8 what was said when the recorder was off.

9 A. Correct.

10 Q. And you really have very little or no
11 control over that.

12 A. I don't control that, no.

13 MR. MAYNARD: No further questions.

14 THE COURT: Thank you, Mr. Maynard.

15 Mr. Villa, do you have cross-examination
16 of Mr. Acee on behalf of Mr. Perez?

17 MR. VILLA: Yes, Your Honor.

18 THE COURT: Mr. Villa.

19 CROSS-EXAMINATION

20 BY MR. VILLA:

21 Q. Good afternoon, Agent Acee.

22 A. Good afternoon.

23 Q. Mr. Perez is not charged in any other
24 cases except this case; correct?

25 A. Correct.

1 Q. And in this case, he's only charged with
2 the alleged murder and conspiracy to commit murder
3 of Javier Molina.

4 A. Yes, sir.

5 Q. And as you testified about with Mr.
6 Castellano, the first -- phase 1, if you will,
7 included an indictment of individuals; correct?

8 A. Yes, sir.

9 Q. And many of those individuals were charged
10 with the murder of Javier Molina.

11 A. Yes.

12 Q. And Mr. Perez was not included in that
13 indictment, was he?

14 A. He was not.

15 Q. In fact, he wasn't included until the
16 second round, phase 2, in April of 2016; correct?

17 A. Yes.

18 Q. And he was only included because of
19 conversations that he had with Billy Cordova; isn't
20 that true?

21 A. No.

22 Q. Well, let me back up. He had a
23 conversation with Billy Cordova that was recorded on
24 a recording device in February of 2016; right?

25 A. Yes.

1 Q. And after those conversations, he was then
2 indicted and charged in this case around about
3 April?

4 A. Yes.

5 Q. And you talked about, in your direct
6 examination, meeting Mr. Cordova. Do you remember
7 that?

8 A. Yes.

9 Q. You said you met him at MDC, the jail in
10 Bernalillo County, outside of Albuquerque.

11 A. Yes, sir.

12 Q. And you might need to just speak up just a
13 little bit. Thank you, Agent.

14 It was your testimony that Mr. Cordova
15 came in with a big smile on his face; right?

16 A. Yes.

17 Q. The guard said, "You know, I don't know;
18 we're going to bring him in, but we're a little
19 afraid he might attack you." I think that was your
20 testimony.

21 A. Those weren't the exact words, but...

22 Q. Words to that effect?

23 A. Yes.

24 Q. And instead, it's your claim that he
25 walked in there with big smile on his face; right?

1 A. He did.

2 Q. That's your testimony today.

3 A. Yes.

4 Q. And you remember testifying about this at
5 the grand jury, don't you?

6 A. Yes.

7 Q. Isn't it true that at the grand jury, you
8 said, "I'll spare you a long story, but basically I
9 said, 'I'm with the FBI and we're going to target
10 you.'"

11 A. I said that later in the conversation.

12 Q. Okay. So you didn't tell the grand jury
13 about the big smile, did you?

14 A. If that's what you have there, I believe
15 you.

16 Q. Well, you don't have to take my word for
17 it. Do you want to see it?

18 A. Sure.

19 MR. VILLA: May I approach?

20 THE COURT: You may.

21 MR. CASTELLANO: Page number, please, Your
22 Honor?

23 MR. VILLA: I'm going to show him page
24 101. You might want to look back at 100 of the
25 April 21, 2016.

1 BY MR. VILLA:

2 Q. Agent Acee, there is the testimony that I
3 just read to you where I indicated that you said,
4 "I'll spare you a long story, but basically said,
5 'I'm with the FBI. We're going to target you.'" I
6 read that right?

7 A. Well, you're reading that right, but who
8 are we talking about?

9 Q. I'll let you take a look at it, and we'll
10 see if we're talking about Mr. Cordova. Why don't
11 we flip back to page 100. And -- let's see. I
12 don't believe you indicate the person's name, but
13 I'll let you take a look at it, and tell me if we're
14 talking about Billy Cordova.

15 A. Can you turn the page?

16 Q. Absolutely.

17 A. Okay. Thank you.

18 Q. Are you talking about Billy Cordova?

19 A. Yes.

20 Q. Can you show me in there where you talked
21 about the big smile?

22 A. Yeah, that would be contained in the part
23 where I said, "I'll spare you a long story."

24 Q. So "I'll spare you a long story" is where
25 you told the grand jury about the big smile?

1 A. No, the opposite. I'm responding to the
2 question I was asked at grand jury about that, and I
3 said, "I'll spare you a long story, but basically,"
4 and then you quoted me.

5 Q. Well, let's talk a little bit about that
6 long story. You told Mr. Cordova that you were
7 after him.

8 A. At one point in that conversation I did.
9 Initially, I didn't start the conversation with him.
10 A couple other agents did.

11 Q. You told Mr. Cordova that you were going
12 to charge him with racketeering, didn't you?

13 A. I told him that we were preparing to do
14 that.

15 Q. And as a matter of fact, you had another
16 agent there with you, Agent Neale?

17 A. Yes.

18 Q. And Agent Neale -- one of his job duties
19 in this case was to write up what we call overt acts
20 against Billy Cordova; right?

21 A. Correct.

22 Q. And overt acts are the acts or the things
23 that somebody does in furtherance of a conspiracy;
24 right?

25 A. In a racketeering enterprise, yes, sir.

1 Q. And so Agent Neale was going to write up
2 the things that Mr. Cordova was going to be accused
3 of in a future case; right?

4 A. Yes.

5 Q. And instead of that happening, during the
6 conversation that we're talking about you told Mr.
7 Cordova that if he worked with you, you wouldn't
8 charge him; right?

9 A. I think that was in a follow-up
10 conversation. I don't know if I said it that first
11 meeting or the second meeting, which was within a
12 couple days.

13 Q. So within a couple of days or maybe in the
14 first meeting you conveyed to Mr. Cordova that he
15 wouldn't be charged with racketeering in exchange
16 for cooperation?

17 A. Well, I said I wouldn't recommend him for
18 charges, yes, in exchange, yes.

19 Q. As a matter of fact, in Mr. Cordova's
20 presence you told Agent Neale that he didn't have to
21 work on those overt acts for Mr. Cordova if Mr.
22 Cordova was going to work for you.

23 A. I don't think the conversation went like
24 that. But at some point I did tell Agent Neale he
25 could stop working on Cordova's overt acts and work

1 on someone else's.

2 Q. And you did that in front of Mr. Cordova,
3 didn't you?

4 A. I know I introduced it to. I don't know
5 if we had that conversation. I definitely had it
6 with Neale. I don't know if I had with Cordova.

7 Q. Would you disagree with me that it was
8 clear to Billy Cordova that you weren't going to
9 pursue racketeering charges against him if he
10 cooperated?

11 A. I believe that was clear to him.

12 Q. And you made it clear to him, didn't you?

13 A. Yes.

14 Q. And this communication that you had with
15 Mr. Cordova took place in approximately January of
16 2016; agreed?

17 A. Yes.

18 Q. And within just a few weeks, Mr. Cordova
19 is then placed in PNM North, in the Level 6
20 facility; right?

21 A. Yes.

22 Q. The Level 6 facility is in PNM North in
23 Santa Fe. It's the most severe lockdown that the
24 State of New Mexico has; correct?

25 A. It's their most secure facility.

1 Q. All right. And the individuals placed in
2 that -- sometimes they refer to that as solitary
3 confinement?

4 A. I think the inmates do. I don't think the
5 Department of Corrections does.

6 Q. Okay. The Department of Corrections gives
7 it a cleaner name, like administrative segregation
8 or something?

9 A. That's probably a question for them.

10 Q. Are you aware of the name they give it?

11 A. They have lot of different programs in
12 there. Let me try to think of what Corrections
13 calls it. I'll have to get back to you. I'm not
14 sure exactly what they call it.

15 Q. So in any case, you knew that Rudy Perez
16 had been there at PNM North at the time Billy
17 Cordova was then moved to PNM North; true?

18 A. Yes.

19 Q. And Mr. Perez was in a downstairs pod in
20 the corner cell; right?

21 A. I now know that. At the time, I just knew
22 he was at the North.

23 Q. Okay. But you were working with the New
24 Mexico Department of Corrections in this
25 investigation; right?

1 A. Yes, sir.

2 Q. And so somebody knew where Rudy Perez was;
3 right?

4 A. Somebody did.

5 Q. Somebody you were working with.

6 A. Yes.

7 Q. And they knew -- or they put Rudy Perez in
8 a corner cell; right?

9 A. I don't think he had a choice. So yes.

10 Q. Well, Mr. Perez didn't have a choice. But
11 I'm saying the Department of Corrections put him
12 there.

13 A. Yes.

14 Q. And in the corner cell, there is only one
15 cell next to you; true?

16 A. True.

17 Q. So if you're going to talk to somebody
18 next door to you, that's the only person you can
19 talk to?

20 A. If you're talking through the vents and
21 you're in your cells, yes.

22 Q. And I want to ask you about that. You
23 talked about how even though they're in these
24 lockdown cells, the folks can talk to each other
25 through the vents; right?

1 A. Yes.

2 Q. And isn't there a vent underneath the bed,
3 that if one inmate is in one cell talking through
4 the vent, and another inmate is another cell talking
5 through the vent, they could hear each other?

6 A. Yes. They have a shared vent, if you
7 will. Yeah.

8 Q. So Mr. Perez was in the corner cell and
9 Mr. Cordova was placed next to him; right?

10 A. Yes.

11 Q. And they talked to each other through the
12 vents?

13 A. They did.

14 Q. And you gave Mr. Cordova, after you had
15 this conversation with him about not charging him
16 for racketeering, a recording device; right?

17 A. Yes.

18 Q. And I think you referred to it in some of
19 your direct testimony as a wire, but it's actually a
20 little recording device that has an on-and-off
21 button so they can record; right?

22 A. That particular device does. I guess we as
23 agents call them all wires. The devices are
24 different. But yes, what you're referring to was a
25 small device with an on-and-off switch.

1 Q. Mr. Cordova's device is not one that you
2 can listen to or have another agent listen to while
3 he's recording.

4 A. It is not real-time or live, no.

5 Q. He records it, turns it off and on, gives
6 it back, it makes its way back to you, and then
7 you're able to listen to it?

8 A. There is a process; but ultimately, yes.

9 Q. Okay. So it's not like a wiretap with a
10 phone where you can actually hear what's going on?

11 A. Not real-time.

12 Q. Or a real-time wire, like when you're
13 talking about the controlled buys, where you guys
14 can hear what's going on; right?

15 A. Correct.

16 Q. So Mr. Cordova is, within weeks of your
17 meeting with him at the Bernalillo County jail,
18 placed next to Rudy Perez and starts having a
19 conversation with him.

20 A. Yes, sir.

21 Q. Let's talk about the timeframe of that.
22 This happens 23 months after the Javier Molina
23 murder, does it not?

24 A. Yes.

25 Q. The Javier Molina murder took place March

1 7 of 2014; true?

2 A. Yes.

3 Q. And this recording that we're talking
4 about occurred in February of 2016.

5 A. Correct.

6 Q. And since that time, there have been a lot
7 of conversations about the Javier Molina murder,
8 hadn't there?

9 A. With me?

10 Q. Conversations -- well, let me back up.
11 You did some interviews of folks and learned
12 information about the Javier Molina murder.

13 A. Yes, sir.

14 Q. And some of that information came from
15 people that didn't have firsthand knowledge of the
16 murder.

17 A. Correct.

18 Q. So people were talking.

19 A. Yes.

20 Q. Right? And I think you testified about
21 Billy Cordova that he was a popular and well-known
22 member of the SNM.

23 A. Yes, sir.

24 Q. When you say "popular," what do you mean
25 by that?

1 A. I usually refer to him as kind of a rising
2 star, well-liked, willing to put in work.

3 Q. So a lot of people knew him.

4 A. I believe so.

5 Q. Do you have any reason to believe Mr.
6 Perez didn't know that Mr. Cordova was popular and
7 well-known?

8 A. He probably did. I've never talked to Mr.
9 Perez, but I assume -- others described him that
10 way.

11 Q. And you agree with me that prior to
12 February 2016, when Mr. Cordova was recording Mr.
13 Perez, that at that point Mr. Perez had not been
14 charged in the Javier Molina murder?

15 A. No, he wasn't charged until April.

16 Q. All right. And some of the folks who were
17 actually what I'll call the hands-on killers of
18 Javier Molina had been charged; correct?

19 A. Yes, sir. They were charged in December.

20 Q. So for instance, Jerry Montoya was one of
21 the individuals charged in the first indictment;
22 right?

23 A. Yes, sir.

24 Q. And so I believe that was Government's
25 Exhibit 605, which I'll put up on the screen here

1 for you. He got charged in the first round; right?

2 A. Yes.

3 Q. And this is Jerry Montoya that we're
4 looking at here. And you can see the date,
5 12/3/2015.

6 A. Yes, sir.

7 Q. That's the date the photo was taken?

8 A. Yes.

9 Q. And that's when the roundup happened of
10 the first guys in phase 1; right?

11 A. Yes.

12 Q. So Mr. Montoya -- you'd agree with me he's
13 got a pretty big smile in this picture, wouldn't
14 you?

15 A. He does.

16 Q. And this is after he's been arrested by
17 you or somebody on your team for the murder of
18 Javier Molina?

19 A. I don't know that we told him what the
20 charges were yet, but he knows he's been arrested by
21 the FBI, certainly.

22 Q. All right. And he had actually been
23 charged by the State of New Mexico for the murder of
24 Javier Molina; right?

25 A. Yes, sir.

1 Q. And you know that he actually stabbed
2 Javier Molina with his own hands.

3 A. I am aware of that.

4 Q. And Javier Molina -- we saw some pictures
5 of it in opening -- had some stab wounds right
6 around his chest, over his heart?

7 A. Yes.

8 Q. And we saw pictures of the shanks that
9 were used allegedly to stab Javier Molina?

10 A. I don't know. That was Ms. Jacks'
11 presentation, I think. I'm not sure.

12 Q. Did you see the pictures?

13 A. I did; not for very long. They probably
14 were. I just want to examine them a little closer.

15 Q. No, I understand that. But do you know if
16 it was Jerry Montoya that stabbed him in the heart,
17 or Jerry Armenta, the other defendant?

18 A. I couldn't tell you which one stabbed him
19 in the heart. I just know that both committed and
20 were successful in stabbing Mr. Molina.

21 Q. Well, Jerry Montoya is cooperating with
22 you, isn't he?

23 A. Yes.

24 Q. Did you ask him how many times he stabbed
25 Javier Molina in the heart?

1 A. I didn't ask him how many times he stabbed
2 him in the heart. I asked him to show me what
3 happened. And I laid on the ground so that he
4 could -- as if I were Mr. Molina, so he could stand
5 over me and show me.

6 Q. Did he show you a stabbing motion to your
7 heart?

8 A. To my upper body area, yes.

9 Q. What about your heart?

10 A. It's in my upper body, yes.

11 Q. And he stabbed over that?

12 A. Yes.

13 Q. Okay. One of the other people indicted in
14 the first round is Jerry Armenta. I believe there
15 is a picture of him, Government's Exhibit 606?

16 A. He was arrested, yes.

17 Q. This is Jerry Armenta?

18 A. Yes, sir.

19 Q. Also arrested on December 3, 2015?

20 A. Yes, sir.

21 Q. Did you ask him whether he stabbed Javier
22 Molina in the heart?

23 A. Again, I just asked him to walk me through
24 it, and he did. I don't think he said he stabbed
25 him in the heart, though. He did say he stabbed

1 him.

2 Q. Where?

3 A. His upper body, as well. It sounded like
4 it was pretty chaotic, and it sounded like they were
5 trying to get into the same areas.

6 Q. I think we heard from Ms. Armijo in
7 opening statement that these two men stabbed Javier
8 Molina 43 times?

9 A. I recall hearing that.

10 Q. Did you ask Mr. Armenta how many times he
11 stabbed Javier Molina?

12 MR. CASTELLANO: Objection, calls for
13 hearsay.

14 MR. VILLA: It's just a question.

15 THE COURT: He can answer this question.
16 It's a yes-or-no question.

17 A. Yes.

18 BY MR. VILLA:

19 Q. You did ask him?

20 A. Yes.

21 Q. Did you ask Jerry Montoya how many times
22 he stabbed Javier Molina?

23 A. Yes.

24 Q. Did they answer you?

25 A. They answered.

1 Q. Both of them?

2 A. Yes.

3 Q. Let's talk about Mario Rodriguez. That's
4 Government's Exhibit 586. He was also charged in
5 the first round; right? Whoops.

6 A. Yes, sir.

7 Q. And Mr. Rodriguez -- his picture here --
8 was arrested on December 3, 2015; right?

9 A. Yes, sir.

10 Q. And Mr. Rodriguez played a part -- or he
11 was charged in the first round with the murder of
12 Javier Molina and conspiracy to murder Javier
13 Molina; right?

14 A. And other charges, yes.

15 Q. And in other charges.

16 A. Yes.

17 Q. So not just those two. He had others.

18 A. Correct.

19 Q. What were those other charges?

20 A. Violent crime in aid of racketeering,
21 assault causing great bodily injury for an incident
22 up at PNM.

23 Q. In the course of your investigation, did
24 you learn about the type of reputation Mario
25 Rodriguez had?

1 A. Yes.

2 Q. What was that?

3 MR. CASTELLANO: Objection, calls for
4 hearsay.

5 MR. VILLA: I think this is part of his
6 investigative conclusion, Your Honor.

7 THE COURT: Well, I think I'll allow him
8 to testify and tell the jury they can't consider
9 this for the truth. But this is going to Mr. Acee's
10 investigation, and so I'll allow it.

11 So don't consider this for the truth of
12 the matter, but only for the information that Mr.
13 Acee knew as part of his investigation.

14 BY MR. VILLA:

15 Q. Go ahead, sir.

16 A. You'd like me to explain what I learned
17 about Mr. Rodriguez in terms of his SNM membership?

18 Q. His reputation.

19 A. His reputation. He's a good soldier.
20 He's very dedicated to the mission of the SNM and
21 the ethos that they stand for, for a long time, and
22 was probably, in my opinion, one of their more
23 fierce soldiers.

24 Q. Scary?

25 A. Well, in the right circumstances, I would

1 probably be concerned with him. But he's a
2 dangerous man.

3 Q. And you investigated a number of violent
4 crimes that Mario Rodriguez allegedly committed,
5 didn't you?

6 A. Yes, sir.

7 Q. Very violent?

8 A. Well, he was involved in some violent
9 incidents, yes.

10 Q. And when I say "very violent," I mean more
11 violent than some of the other violent acts that you
12 investigated in this case.

13 A. I don't agree.

14 Q. You don't think so?

15 A. No, I won't deny they were violent. But
16 to me, there are other -- in my opinion, in my
17 experience, "very violent" to me is like
18 decapitation and stuff like that. He's a violent
19 man.

20 Q. And he had a reputation for being fierce.

21 A. Yes.

22 Q. And you'd agree with me that he played a
23 large role in orchestrating the murder of Javier
24 Molina?

25 A. He played a significant role, yeah.

1 Q. One of other individuals that was indicted
2 in the Javier Molina murder was Timothy Martinez.
3 That's Government's Exhibit 561?

4 A. Yes, sir.

5 Q. There is Mr. Martinez there on your
6 screen; right?

7 A. Yes.

8 Q. So these four individuals that we talked
9 about get charged in phase 1, and in your
10 investigation you learned that Mr. Martinez was a
11 good friend of Javier Molina; right?

12 A. I did.

13 Q. And his job in this alleged hit was to
14 incapacitate Javier Molina so that Jerry Montoya and
15 Jerry Armenta could stab him to death?

16 A. I think it was more than that, but you're
17 correct.

18 Q. It was even more than that.

19 A. I think it was to lure him into his room
20 to use drugs, and then incapacitate him -- excuse
21 me. Let me drink some water.

22 Q. Go ahead. Now, all four of these
23 individuals that we just talked about have
24 cooperated with you.

25 A. Yes.

1 Q. After they got charged in the indictment
2 in phase 1?

3 A. Correct.

4 Q. And these individuals have entered plea
5 agreements with the Government, have they not?

6 A. They have.

7 Q. And one of the things that they can get
8 from their plea agreements if they testify and
9 cooperate is a reduction in their sentence?

10 A. It's up to the Judge.

11 Q. Okay. But that's something that the
12 Government can ask for in exchange for their
13 cooperation, is it not?

14 A. Yes.

15 Q. I'm sorry?

16 A. Yes.

17 Q. Otherwise, they're facing life sentences
18 for the murder of Javier Molina; true?

19 A. True.

20 Q. If they cooperate, they might not have to
21 spend the rest of their lives in prison.

22 A. It's up to the Judge.

23 Q. But it's possible.

24 A. Yes.

25 Q. Because of their cooperation.

1 A. Yes.

2 Q. Now, let's go back to what we were talking
3 about with Mr. Perez. Billy Cordova was never
4 charged in phase 1, phase 2, or phase 3, or any
5 other phase of this investigation, was he?

6 A. He was not.

7 Q. Because he agreed to cooperate.

8 A. No.

9 Q. Well, in any case, that decision wasn't
10 yours to make, was it?

11 A. No.

12 Q. Okay. And as we sit here today, Billy
13 Cordova has never been charged with racketeering or
14 any other crime that you've been investigating?

15 A. That's true.

16 Q. And before Billy Cordova recorded Rudy
17 Perez in February of 2016, you knew, didn't you,
18 that there were rumors that Mr. Perez was
19 cooperating?

20 A. No.

21 Q. You know that now, don't you?

22 A. I do.

23 Q. And you know that Mr. Cordova used those
24 rumors to exploit Mr. Perez?

25 A. I don't agree.

1 Q. Well, we'll ask Mr. Cordova about that.

2 All right?

3 A. Yes, sir.

4 Q. You would agree with me that oftentimes --
5 in the course of your investigation you learned that
6 there were rumors that somebody might be
7 cooperating; right?

8 A. Yes.

9 Q. And if there is a rumor that somebody is
10 cooperating with law enforcement, that person could
11 be in jeopardy.

12 A. Yes.

13 Q. Their life could be in jeopardy.

14 A. Yes.

15 Q. So if there were a rumor about Rudy Perez,
16 his life could be in jeopardy.

17 A. Could be.

18 Q. And you would agree with me, at least,
19 that -- you may not have known it then, but you know
20 it now -- at the time that Mr. Perez talked to Billy
21 Cordova, that there were rumors he was cooperating
22 with the FBI?

23 A. I don't know that we heard that.

24 Q. Well, that there were rumors that he was
25 cooperating in the investigation because he had not

1 been charged in phase 1.

2 A. There were rumors that he may have
3 cooperated. Yes, I do recall that.

4 Q. So let me ask you this. In the course of
5 your investigation, in interviewing the members
6 of -- alleged members of SNM and other gang members
7 and things like that, did you come to learn that
8 sometimes people take responsibility for things they
9 don't do?

10 A. Yes.

11 Q. So a member might take responsibility for
12 a crime they didn't commit?

13 A. Yes.

14 Q. Or for playing a role in a crime that they
15 didn't actually play?

16 A. Yes.

17 Q. And part of the reason they do that is to
18 look like they're tough?

19 A. I guess.

20 Q. Well, I don't want you to guess. Let me
21 ask you: In the course of your investigation, did
22 you reach conclusions about why people take
23 responsibility for things they don't do?

24 A. It's incredibly foolish. I don't know. I
25 confronted guys on that before, so I'm not sure how

1 to answer that. They do it. Why they're doing it I
2 don't know, because I think it's a bad idea.

3 Q. One reason might be so that people don't
4 think they're a cooperator?

5 A. Could be.

6 Q. That's a good reason?

7 A. Until the truth is found out, I guess.

8 Q. And if you're going to take responsibility
9 for something you didn't do, perhaps because you
10 don't want people to think you're a cooperator, it
11 might be a good idea to say it to someone who is
12 well-known and popular in the gang?

13 A. Yes.

14 Q. Because if they're well-known and they're
15 popular in the gang, they might spread the word
16 that, oh, you're not a cooperator; you actually
17 helped out?

18 A. I suppose that could happen.

19 Q. Okay. So I want to back up just a little
20 bit.

21 The testimony that you provided in your
22 direct and that you've provided so far, that's all
23 based on the investigation that you began -- I think
24 you testified you began it in February or March of
25 2015?

1 A. Yes, sir.

2 Q. So your knowledge about the SNM and your
3 label by the FBI as a subject matter expert in SNM
4 comes from that investigation?

5 A. Solely.

6 Q. And in the course of your investigation,
7 didn't you learn -- or at least were you
8 investigating whether there was a division in the
9 SNM about whether to kill Javier Molina?

10 A. Yes.

11 Q. So some folks wanted to, and some folks
12 didn't?

13 A. Yes.

14 Q. So it's certainly possible that some folks
15 decided to act on that, and other folks didn't?

16 A. That's what I believe, yes.

17 Q. That's what you believe happened in this
18 case.

19 A. Yes, sir.

20 Q. And you were investigating, I think you
21 said, some cold-case homicides. Did that include
22 all the homicides that you were investigating, or do
23 you consider them all cold cases, or were there
24 active homicides you were investigating, as well?

25 A. Most of them are cold, but there were a

1 couple still active.

2 Q. And how many of those homicides were you
3 investigating Billy Cordova for?

4 A. Three.

5 Q. Three homicides?

6 A. Yes, sir.

7 Q. Do you know how many people Billy Cordova
8 has actually killed?

9 A. He's told me he's not killed anyone. But
10 to answer your question, I don't know.

11 Q. All right. And as we sit here today, Mr.
12 Cordova hasn't been charged with any of the
13 homicides that you've been investigating.

14 A. One, yes, sir. What he's presently doing
15 time for.

16 Q. Well, but that was actually charged by the
17 Bernalillo County DA; right?

18 A. Yes, sir, it was. We were looking at it.
19 I wanted to answer your question.

20 Q. That's fair.

21 A. It was one -- to me, it doesn't matter who
22 is looking at it or charging it; we're still looking
23 at it, too, because again, as you know, sir, it
24 could fall under the racketeering.

25 Q. So you did not bring that homicide into a

1 racketeering case, did you?

2 A. No, sir.

3 Q. You just left it as it was, after Billy
4 Cordova agreed to cooperate.

5 A. I didn't leave it. I wanted to charge
6 him.

7 Q. But you didn't.

8 A. No.

9 Q. And that's not all you investigated.
10 Well, excuse me. That's not all your investigation
11 uncovered that Billy Cordova did, is it?

12 A. No.

13 Q. You were testifying earlier about some
14 drug trafficking and an individual named Christopher
15 Garcia?

16 A. Yes, sir.

17 Q. In the course of your investigation, you
18 learned that Billy Cordova was involved in some of
19 that drug trafficking.

20 A. Yes.

21 Q. Billy Cordova has not been charged for his
22 role in that drug trafficking, has he?

23 A. No.

24 Q. You've also learned in the course of your
25 investigation that Mr. Cordova had a role in the

1 murder of Javier Molina.

2 A. I'm not sure that's correct.

3 Q. Well, let me ask the question this way.
4 Before Javier Molina was killed, did Cordova agree
5 that he should be killed?

6 A. Yes. I say that because I think when
7 Billy was an active member, he believed all
8 informants should be killed.

9 Q. But isn't it true that Billy Cordova told
10 you that he thought Javier Molina should be killed?

11 MR. CASTELLANO: Object, Your Honor. It
12 wasn't Agent Acee. It was a different agent.

13 THE COURT: Well, if he knows the answer,
14 he can answer it.

15 A. I'm not sure. I know his philosophy on it
16 was that informants should be killed. I don't know
17 that I talked to him about specifically Molina.

18 BY MR. VILLA:

19 Q. Fair enough. But on the side of the
20 divide between whether Javier Molina should or
21 should not be killed, Cordova was on the side of
22 should.

23 A. Yes.

24 Q. And Cordova -- well, strike that. You
25 talked about how you handle informants and open them

1 and close them and pay them and that sort of thing.

2 Do you remember that?

3 A. Yes, sir.

4 Q. So Billy Cordova was -- after you met with
5 him in Bernalillo County was opened up as an
6 informant by you; true?

7 A. True.

8 Q. And Mr. Cordova was provided money by
9 you -- or the FBI.

10 A. Yes.

11 Q. He was provided \$650 in what you would
12 call payments for services as an informant?

13 A. That would be that \$50 amount, average,
14 yes.

15 Q. So he got \$50 a month put on his books at
16 the prison to use; right?

17 A. Yes.

18 Q. And that added up to \$650?

19 A. That sounds right.

20 Q. Do you want to look at the paperwork that
21 reflects that?

22 A. I believe you, sir.

23 Q. Okay. Was he also given money for food?

24 A. It's part of that.

25 Q. Well, it's over and above the \$650, isn't

1 it?

2 A. If there's additional receipts there, then
3 it's above, yes.

4 Q. You don't --

5 A. I'd want to see the aggregate total. I'd
6 have to look at his paperwork. Off the top of my
7 head -- I'm sorry to interrupt you. I just don't
8 know.

9 Q. I was interrupting you. I'm sorry. If
10 you looked at the paperwork, that might refresh your
11 recollection?

12 A. Yes.

13 MR. VILLA: May I approach?

14 THE COURT: You may.

15 BY MR. VILLA:

16 Q. Agent Acee, I'll show you some paperwork
17 from the United States Attorney's Office, and look
18 at page 3, Bates No. 30711. Does this refresh your
19 recollection about how much money Billy Cordova was
20 paid?

21 A. Yes, sir.

22 Q. So \$650 for informant work; right?

23 A. Yes.

24 Q. \$100 for food?

25 A. Yes.

1 Q. \$200 for telephone expenses?

2 A. No. I can explain that.

3 Q. Okay. Go ahead.

4 A. Well, I've got to go back and look at his
5 records. I'll give you an example. Like Eric Duran
6 should have telephone expense, and that's me paying
7 for the wire phone. The way the bureau has it, I
8 have to account for it somewhere, so it's CHS, or a
9 confidential human source, an informant expense. I
10 just have to put it under telephone expense. But
11 that's for the wiretap, so --

12 Q. Did Billy Cordova get a phone?

13 A. We didn't deploy a phone, but there were
14 some instances where we purchased phones and then we
15 realized it wouldn't work. Based on where in the
16 facility they were, there was no signal. So I'd
17 have to do research to figure out if I purchased a
18 phone and a plan. That's my initial thought, when I
19 look at that, that we must have bought a phone.

20 Q. But you don't disagree with me that this
21 says the aggregate total for Billy Cordova is \$950?

22 A. That's what it says.

23 Q. And it includes a \$200 phone expense.

24 A. Yes, sir.

25 Q. And that was money paid to Billy Cordova

1 when he was opened as an informant; right?

2 A. No. That's just money that --

3 Q. Not the phone. I guess the other money.

4 A. Yeah. It wasn't a one-time payment, like,
5 "Hey, you're open, and here's that money." That's a
6 total of -- you know, we might put \$150 in, and then
7 say, "Okay, that's for the next three months,"
8 because we didn't want to go up to the penitentiary
9 every month. But that is what he was paid.

10 Q. And you said that the money could be used
11 for purchasing things in the commissary like food or
12 hygiene items, other things like that; right?

13 A. Yes, sir. I've actually never seen the
14 commissary, so I don't know what's in there. But my
15 understanding of working with Corrections is,
16 they're allowed to use so much money each month for
17 commissary, and that's what that money was intended
18 for.

19 Q. I think it was your testimony that they
20 could purchase anything that the prison allows them
21 to purchase; right?

22 A. It's up to the prison, so, yes.

23 Q. Okay. But you know, in the course of your
24 investigation, that other things get purchased in
25 prisons that aren't allowed to be purchased; right?

1 A. Are we talking about drugs or --

2 Q. Yeah, I'm talking about drugs.

3 A. Yes.

4 Q. And other stuff that's contraband?

5 A. Yes. There is an underground economy, for
6 sure.

7 Q. And the way -- at least one way that an
8 inmate might get something from the underground
9 economy contraband is by trading for something that
10 they purchased in the commissary.

11 A. Yes.

12 Q. Or using money that they have on their
13 books to purchase commissary for another inmate in
14 exchange for contraband.

15 A. I think that's possible.

16 Q. So you can't say, as you sit here today,
17 that some of that money Mr. Cordova received wasn't
18 used and ultimately end up in the underground
19 economy for contraband.

20 A. I don't know how Mr. Cordova spent his
21 money.

22 Q. But you do know, don't you, that Mr.
23 Cordova is still in prison today.

24 A. Yes.

25 Q. And less than a month and a half ago, he

1 used drugs in prison, didn't he?

2 A. I'm not sure I have that information.

3 Q. Now, you testified, Agent Acee, that you
4 didn't think you have that information. Is that
5 because you don't remember, or you're not sure, you
6 don't know?

7 A. I have a lot of information in my head. A
8 lot of informants. I'm trying to remember if Mr.
9 Cordova used drugs in the last month and a half and
10 how I know that.

11 Q. If I showed you a letter from Mr.
12 Castellano, might that refresh your recollection?

13 A. Yes.

14 MR. VILLA: May I approach, Your Honor?

15 THE COURT: You may.

16 MR. CASTELLANO: Your Honor, once again,
17 that was the wrong witness. We would stipulate to
18 that fact. I think they just have the wrong witness
19 they're asking that information from. We'll
20 stipulate.

21 THE COURT: You accept the stipulation?

22 MR. VILLA: The stipulation is in the last
23 month and a half Mr. Cordova used -- and I'd like to
24 read the drugs.

25 MR. CASTELLANO: We can stipulate to that

1 as a fact. I'll allow him to read it into the
2 record. That's information our office provided to
3 the defense.

4 THE COURT: All right. Go ahead.

5 MR. VILLA: Your Honor, the stipulation
6 would be that Mr. Cordova last used drugs
7 approximately one and a half months ago. This is in
8 a letter dated January 29, 2018, and the drugs
9 listed are Suboxone, methamphetamine, heroin, spice,
10 and prescription medications, while incarcerated in
11 Clayton.

12 MR. CASTELLANO: We stipulate to those
13 facts, Your Honor. That's true.

14 BY MR. VILLA:

15 Q. So Agent Acee, if you didn't know it, you
16 know it now; right?

17 A. Yes, sir.

18 Q. Do you have any idea how he bought those
19 drugs?

20 A. Sounds like they were having parties up in
21 Clayton.

22 Q. Do you have any idea how Mr. Cordova
23 bought those drugs?

24 A. No.

25 Q. Speaking about parties, would you agree

1 with me that there was a party at PNM for some of
2 the informants?

3 A. Are you referring to something I would
4 have attended?

5 Q. Well, I don't know. Did you attend a
6 party?

7 A. I'm trying to remember what it was. Their
8 family was there. I wouldn't call it a party, but
9 there was some kind of social engagement that I
10 attended with other agents. Their family members
11 were there.

12 Q. Where was the party?

13 A. You keep calling it a party.

14 Q. Where was the social engagement?

15 A. It was at PNM. I don't remember what part
16 of the facility.

17 Q. PNM up in Santa Fe?

18 A. Yes, sir.

19 Q. And which cooperating witnesses were in
20 attendance?

21 A. I'm going off memory here, and I helped
22 prepare a document that actually lists who. But
23 based on memory, Benjamin Clark. Robert Martinez
24 may have been there. He kind of keeps to himself,
25 though. Jerry Armenta.

1 Q. Jerry Armenta who we saw a minute ago?

2 A. Yes, sir.

3 Q. The same Jerry Armenta that stabbed Javier
4 Molina to death?

5 A. That's the same person.

6 Q. Okay. Who else was there? Let me ask you
7 this. Was Billy Cordova there?

8 A. He may have been. The reason I'm
9 hesitating is: Not all the cooperators came on at
10 the same time, so they joined that program up there
11 at different times and then some left it. It's
12 tough. I had to go back and research my records to
13 come up with that list that I provided to the U.S.
14 Attorney's Office.

15 Q. So there was a social engagement.

16 A. It was like -- yes, it was definitely a
17 social engagement. I thought it was -- Corrections
18 was doing some kind of programming graduation or
19 something.

20 Q. And the families were there?

21 A. Not all the guys, but a few guys had
22 family members there.

23 Q. Some other agents were there?

24 A. Yes.

25 Q. Who else was there?

1 A. Just from the FBI?

2 Q. No. How about anybody from the U.S.
3 Attorney's Office?

4 A. No one. Just us and Corrections.

5 Q. You and Corrections. When you say
6 "Corrections," are you talking about the Security
7 Threat Investigation Unit, STIU?

8 A. Anytime we're walking around in the
9 facility, they're usually with us, escorting and
10 whatnot. So I'm sure they were there. Mr. Myers
11 was there, who I talked about earlier being a deputy
12 secretary at that time. Myself, and then two of the
13 agents that I was training and were part of the
14 investigation, Joe Sainato and Thomas Neale.

15 Q. Thomas Neale?

16 A. Yes, sir.

17 Q. The same Neale that you had tasked to
18 write up overt acts in the racketeering case against
19 Billy Cordova?

20 A. Yes, sir.

21 Q. Who you told to stop doing that when Mr.
22 Cordova cooperated?

23 A. Yes.

24 Q. The same guy?

25 A. It is.

1 Q. At this social engagement, was there food?

2 A. Yes.

3 Q. The prison food, the kind they get from
4 the cafeteria?

5 A. No.

6 Q. What kind of food?

7 A. Pizza.

8 Q. Who got the pizza?

9 A. Mr. Myers.

10 Q. Mark Myers?

11 A. Yes.

12 Q. He's one of the individuals that is part
13 of your investigative group?

14 A. Yes, sir.

15 Q. Anything else besides pizza?

16 A. I think there were drinks, soda or juice.

17 Q. Okay.

18 A. I didn't eat, so I don't know. I didn't
19 really pay attention.

20 Q. And during this -- I think you said that
21 you remember Jerry Armenta being there; right?

22 A. Yes. And I remember Javier Rubio was
23 there. Ben Clark. Paul Rivera may have been there.

24 Q. Was there more than one party that you
25 attended, or social engagement?

1 A. Well, I think you would probably suggest
2 that there was one more, yes. Timothy Martinez
3 graduated from college while in prison, and I
4 attended that, as well.

5 Q. Timothy Martinez? Do you remember when
6 that occurred?

7 A. I don't. I have some records of it
8 somewhere. But it was -- if you want me to give you
9 a rough estimation, it was -- I'm trying to remember
10 what facility. It was at Sandoval. So this would
11 have been post L pod, post PNM, and before the
12 compromise of the tablets. That would be my time
13 line.

14 Q. When was the compromise of the tablets?

15 A. Off the top of my head, I couldn't tell
16 you. I did write some documentation and some
17 reports on it. I just don't recall a date as I sit
18 here.

19 Q. You said that was at Sandoval?

20 A. Yes.

21 Q. But Timothy Martinez's party.

22 A. The graduation, yes.

23 Q. Graduation. All right. And Timothy
24 Martinez is the same individual who choked out his
25 friend Javier Molina so he could be stabbed to

1 death?

2 A. That's the same Timothy Martinez.

3 Q. This party occurred after that; right?

4 A. Yes.

5 Q. "Sandoval" is the Sandoval County
6 Detention Center, isn't it?

7 A. It is.

8 Q. And the Sandoval County Detention Center
9 is a place where individuals who are pending federal
10 charges can be held?

11 A. It's one of many, yes.

12 Q. And Mr. Martinez was held there at some
13 point?

14 A. Correct.

15 Q. And wasn't he held there with a number of
16 other cooperating witnesses?

17 A. Yes.

18 Q. And they were held together?

19 A. They were in the same pod.

20 Q. And a pod is --

21 A. I'm sorry, they were -- yes, some were.
22 Some were in another area of the detention center.

23 Q. You're aware, are you not, that Timothy
24 Martinez was selling Suboxone in Sandoval County
25 Detention Center?

1 A. I didn't conduct any investigations of
2 that. But there was Suboxone all over that
3 facility.

4 Q. What's Suboxone?

5 A. Suboxone is a prescription narcotic to
6 help heroin users.

7 Q. And if you take Suboxone and you're not a
8 regular heroin user, it gets you high, doesn't it?

9 A. That's what I've been told, yes.

10 Q. So it's often sold in jails and prisons so
11 people can get high?

12 A. Yes, sir.

13 Q. And it's easy, isn't it, to hide, because
14 it's, like, on these small, little strips?

15 A. Yes.

16 Q. So would you disagree with me if Mr.
17 Castellano wrote me a letter and told me that Roy
18 Martinez, another cooperating witness, bought
19 Suboxone from Timothy Martinez while in custody in
20 Sandoval County?

21 A. I believe Mr. Castellano, and I believe
22 your representation.

23 Q. Okay. Do you know if Mr. Martinez was
24 selling Suboxone while he was taking his college
25 classes?

1 A. I don't know.

2 Q. So let's go back to the social engagement.
3 That was up at PNM; right?

4 A. Yes.

5 Q. In a different timeframe than the
6 graduation party.

7 A. Yes.

8 Q. And you don't remember if Billy Cordova
9 was at that social engagement?

10 A. I put it in my documentation to the U.S.
11 Attorney's Office when I was requested to list out
12 all these benefits and things of this nature. I'd
13 have to refer to that. He may have been.

14 Q. Do you remember socializing with Billy
15 Cordova?

16 A. I don't socialize with any of my
17 informants.

18 Q. Well, when you go to a social engagement
19 with them, would you consider that socializing?

20 A. Very minimally. It would look a lot
21 different if you and I went somewhere and
22 socialized. I don't eat the food. I say "Hello."
23 I show up. And I leave.

24 Q. So you didn't talk to Mr. Cordova about
25 the murders that you stopped investigating on him?

1 A. At these so-called social functions?

2 Q. Yeah.

3 A. No.

4 Q. Did you talk to Mr. Armenta about what it
5 was like to stab Javier Molina to death?

6 A. I didn't ask any investigative questions.
7 I kept my presence there to the shortest of a time
8 as I could.

9 Q. But you showed up.

10 A. I've said that, yes.

11 Q. Why?

12 A. With these guys, it's all about respect.
13 And I have to show it at times without compromising
14 who I am or what I do. So I show up, I show my
15 respect. I don't eat food. I don't get to know
16 family members. I make my presence known, and I
17 leave. I get back to work.

18 Q. So let me go back to --

19 THE COURT: Let me ask you this, Mr.
20 Villa. I'm thinking of breaking for about 15
21 minutes, letting everybody rest. Then we'll go
22 about another 45. Would this be a good place for us
23 to do that?

24 MR. VILLA: Yes, Your Honor.

25 THE COURT: All right. I'm not going to

1 give those instructions again. Keep them in mind.

2 All rise.

3 (The jury left the courtroom.)

4 THE COURT: All right. We'll be in recess
5 for about 15 minutes.

6 (Court was in recess.)

7 THE COURT: All right. Let's go on the
8 record.

9 Did you have anything else, Mr. Villa?

10 Ms. Fox-Young, on yours, are you just
11 going to give me a letter?

12 MS. FOX-YOUNG: Yes, we'll just do a
13 letter.

14 THE COURT: Anybody else got anything
15 before Ms. Standridge gets the jury? The
16 Government?

17 MS. ARMIJO: We do have something to
18 raise, but we could do it later.

19 THE COURT: Go ahead while she's getting
20 the jurors.

21 MS. ARMIJO: Your Honor, we will be
22 submitting a letter to the Court, or possibly a
23 motion. We believe that Mr. Lowry's opening
24 statement has created an issue now for his -- the
25 issue regarding the conflict of interest.

1 As you'll recall -- and we have a
2 transcript -- you indicated that you thought this
3 instant case and Duran's prior civil case are not
4 related. But based upon his opening statements,
5 where Mr. Lowry personally went into great detail
6 about providing a motive for Mr. Duran's previous
7 beatdown, which was the basis of Mr. Donatelli's
8 representation, they're using that as part of their
9 defense. We believe that potentially raises an
10 issue for a conflict.

11 THE COURT: Was everything you said just
12 public record?

13 MR. LOWRY: Absolutely, Your Honor.

14 THE COURT: And you're still not planning
15 to --

16 MR. LOWRY: Absolutely was not part of Mr.
17 Donatelli's representation. Actually, it was part
18 of the United States' prosecution of the three
19 prison guards at Lea County Correctional.

20 THE COURT: Assuming that -- and I have to
21 assume Mr. Lowry is being truthful there -- that all
22 he did was rely on public record information, I
23 wouldn't be inclined to change my ruling.

24 And you're still not going to
25 cross-examine --

1 MR. LOWRY: No, not at all.

2 THE COURT: I still think we're in place.

3 We didn't discuss, pretrial, him not using it in
4 opening. So I'm not inclined to ding him on that.

5 Anything else, Ms. Armijo?

6 MS. ARMIJO: No, Your Honor. I think
7 that -- for the record, I think our office will
8 still send something.

9 MR. CASTELLANO: I do have one quick
10 thing, Your Honor. In opening statements, they
11 mentioned where Eric Duran moved after he left New
12 Mexico. And I just want to --

13 THE COURT: Why don't we do this? If the
14 jury is ready -- are they ready?

15 THE CLERK: They are.

16 THE COURT: I'll let you make that a
17 little bit later. All rise.

18 (The jury entered the courtroom.)

19 THE COURT: All right. Everyone be
20 seated. All right.

21 Mr. Acee, I'll remind you that you're
22 still under oath.

23 Mr. Villa, if you wish to continue your
24 cross-examination of Mr. Acee, you may do so at this
25 time.

1 MR. VILLA: Yes, sir, thank you.

2 THE COURT: Mr. Villa.

3 BY MR. VILLA:

4 Q. Agent Acee, I want to go back to the four
5 killers of Javier Molina: Jerry Montoya, Jerry
6 Armenta, Timothy Martinez, and Mario Rodriguez.
7 They were all paid money; correct?

8 A. Yes.

9 Q. When I say "paid money," I mean paid money
10 by the FBI?

11 A. Yes.

12 Q. After they cooperated.

13 A. Correct.

14 Q. After they entered into the plea
15 agreements we talked about before the break, in
16 which they'll have an opportunity to argue for less
17 than a life sentence for murdering Javier Molina?

18 A. As soon as they agreed to cooperate, they
19 were opened. And then what I've described as the
20 \$50 a month in commissary money was put on their
21 accounts.

22 Q. For Jerry Armenta, that totaled \$750?

23 A. If that's the aggregate total, then yes.

24 Q. Is that a yes?

25 A. If that's what you have there -- I'm not

1 looking at it -- I believe you.

2 Q. Okay. I mean, does that sound right?

3 A. Yes.

4 Q. Do you want to see it?

5 A. Mr. Villa, I don't doubt your credibility.

6 Q. All right. So Timothy Martinez received
7 an aggregate total of \$1,062.86. Does that sound
8 right?

9 A. Yes.

10 Q. So in addition to receiving that money, he
11 also is going to get to argue for a lesser sentence
12 for his testimony he's going to provide in this
13 trial.

14 A. He could, yes.

15 Q. Jerry Montoya received an aggregate total
16 of \$824.31?

17 A. Yes.

18 Q. And he'll also get to argue for a
19 reduction in his sentence for the killing of Javier
20 Molina in exchange for his testimony in this trial.

21 A. And his attorney could do that.

22 Q. Were any of these four individuals told
23 that they were going to get a specific sentence in
24 exchange for their cooperation?

25 A. Not by me. I wouldn't make those

1 representations, and I don't believe I heard anyone
2 else do that, either.

3 Q. Nothing material where --

4 A. A specific sentence, no. I'm not in those
5 calculations or conversations, though.

6 Q. When you open an informant, like you did
7 with Billy Cordova, you have to go over certain
8 rules with them; right?

9 A. Yes, sir.

10 Q. Rules that they're expected to follow.

11 A. Correct.

12 Q. If they don't follow their rules, like you
13 testified on direct, you have to close them as an
14 informant.

15 A. I don't have to. That's my choice. I can
16 request to keep them open despite that. I can do
17 memorandums justifying keeping them open. In none
18 of these cases did I do that, and if they didn't
19 follow my instructions, I closed them.

20 Q. Because if they don't follow your
21 instructions, it's hard to trust them, isn't it?

22 A. It's hard to control them. I have guys
23 that -- they're dope fiends, and they'll go back to
24 drugs, but they've never told me a lie.

25 Q. I didn't say a lie. I said it's hard to

1 trust them.

2 A. Yes.

3 Q. Maybe they lied; maybe they didn't. But
4 it's hard to trust them.

5 A. If they don't follow instructions, it's
6 hard for me to trust them.

7 Q. And if they're dope fiends, it's hard to
8 trust them.

9 A. That they won't go back to dope. There
10 are other areas where they're trustworthy, in my
11 mind.

12 Q. But a dope fiend isn't necessarily as
13 trustworthy as someone who is clean and sober;
14 right?

15 A. No, not necessarily.

16 Q. Somebody who is addicted to drugs --
17 sometimes they'll do anything to get those drugs.

18 A. Some people.

19 Q. And as a matter of fact, you closed Billy
20 Cordova, didn't you?

21 A. I did.

22 Q. Because he wasn't following the rules.

23 A. Correct.

24 Q. He was breaking the rules.

25 A. Yes.

1 Q. And you made the decision that you
2 couldn't trust him anymore, so you closed him.

3 A. I don't have trust issues with him. I'm
4 differentiating there. I just closed him because I
5 didn't want to give him any more benefits, and I was
6 no longer interested in keeping him open.

7 Q. If you had kept him open, you could have
8 him do more cooperation, couldn't you?

9 A. No. I mean, he wanted to continue to
10 cooperate, but he wasn't -- in terms of doing active
11 stuff on the streets, if that's what you're
12 referring to. But that wouldn't have worked.

13 Q. Well, you didn't close him after you had
14 him record -- or he recorded Rudy Perez, and Rudy
15 Perez then gets charged. You didn't close him then,
16 did you?

17 A. No.

18 Q. You didn't close him six months after
19 that, did you?

20 A. No.

21 Q. You kept paying him money.

22 A. Yes.

23 Q. And one of the things that happens when
24 you stop, when you close him, is, you don't have to
25 pay him any money anymore?

1 A. Correct. There is no way for me to do it
2 anymore, to pay them.

3 Q. With respect to Billy Cordova, one of the
4 reasons that led you to close him is that he was
5 violating rules of the prison.

6 A. Yes.

7 Q. He was given contact visits by the prison;
8 correct?

9 A. He was.

10 Q. And a contact visit is where he can
11 actually be in the same room with a family member, a
12 friend, where they're not talking between glass;
13 right?

14 A. I'm not sure. I just know what he did
15 wasn't allowed. I've never been to a contact visit,
16 so I kind of hate to say what they look like. But
17 there are definitely rules. What I know is that
18 what Mr. Cordova did during some of those was not
19 allowed.

20 Q. Agent Acee, you've been investigating the
21 SNM since spring of 2015.

22 A. Yes, sir.

23 Q. And you are investigating some of their
24 classification levels; right?

25 A. No.

1 Q. Well, you testified with Mr. Castellano
2 that you know that the New Mexico prisons kept
3 alleged gang members in Level 4, 5 or 6; right?

4 A. I only know about 5 and 6.

5 Q. Oh, I'm sorry.

6 A. I can speak about those, yes.

7 Q. 5 and 6.

8 A. I have knowledge on 5 and 6. I don't know
9 much about the other programs. They didn't come
10 into play in this investigation.

11 Q. In the course of your investigation, you
12 learned that alleged gang members who were held in
13 Level 5 and 6 don't get contact visits; right?

14 A. Correct. I think that starts at Level 4.

15 Q. That starts at Level 4?

16 A. That's what I recall, yes.

17 Q. And you may not know what a contact visit
18 looks like, but when you investigated this case and
19 heard the term "contact visit," can you please tell
20 the jury what you understood that to mean?

21 A. They could see their families. In some
22 facilities, I guess, they're allowed to kiss their
23 children, just once. The reason I struggle with
24 defining what exactly they are is, it seems
25 different at facilities. And that may have to do

1 with the levels. When I interact with an inmate at
2 the facility, it's as an attorney visit or it's in a
3 secluded area. So the rules are different.

4 Q. But a contact visit is where they can
5 touch a family member? Hence the word "contact";
6 right?

7 A. Yes.

8 Q. I mean, that's fair?

9 A. Yeah. I just hesitate to define something
10 I don't know a lot about. In other facilities there
11 are contact visits and there's glass. So I'm not
12 really sure.

13 Q. Fair enough. You would agree with me,
14 though, that the prisons when they were housing Mr.
15 Cordova and housing some of these other cooperators,
16 including Jerry Armenta, were giving them privileges
17 that they didn't normally get in the classification
18 level that they were in?

19 A. That's part of the controversy. That's
20 part of the problem, because I'm not sure what
21 classification level they were at that point. They
22 were housed at Level 6 for security, but because
23 they were cooperating and had renounced the gang,
24 Corrections would have put them at a Level 4. There
25 just wasn't a safe Level 4 to put them at. So I'm

1 not really sure how to answer that.

2 Q. I think it was your testimony that the
3 denial of the contact visit starts at Level 4?

4 A. I think contact visits start at Level 4
5 and the denial starts at 5. But I don't work for
6 the Corrections Department and I hesitate to sit
7 here and testify to what their policies are.

8 Q. In any case, Mr. Cordova, unlike someone
9 else in Level 6, was given contact visits.

10 A. Mr. Cordova was given contact visits.

11 Q. And in those contact visits, he was
12 visiting with his wife and children?

13 A. Yes.

14 Q. And in the course of those contact visits,
15 he was having sex with his wife; correct?

16 A. I believe that he did during more than one
17 occasion, yes.

18 Q. Do any contact visits that you're aware of
19 in the State of New Mexico allow an inmate to have
20 sex?

21 A. No.

22 Q. So he was violating the rules?

23 A. Absolutely.

24 Q. He wasn't just having sex with his wife in
25 those contact rooms, was he?

1 A. Are you asking if he had sex somewhere
2 else?

3 Q. No, I'm asking what else was going on in
4 those contact rooms.

5 A. I'm not sure what you're asking.

6 Q. Let me ask the question this way: Was he
7 not having sex with his wife in front of his
8 children in the contact visit rooms?

9 A. His children were in the rooms. He and
10 his wife covered up, like you don't see any skin.
11 But when I watched the video of it, I believe they
12 were having sex. There was no doubt in my mind when
13 I saw it.

14 Q. And the children are there?

15 A. The children are on the other side of the
16 table.

17 Q. Has Mr. Cordova ever been charged with
18 child abuse for that?

19 A. No, he wasn't charged. We contacted the
20 State Police and asked them to investigate, and also
21 contacted Child Protective Services, CYFD. We made
22 all the notifications as soon as we found out.

23 Q. And after Mr. Cordova did that, you closed
24 him as an informant?

25 A. Yes, sir.

1 MR. VILLA: May I have a moment, Your
2 Honor?

3 THE COURT: You may.

4 MR. VILLA: No further questions.

5 THE COURT: Thank you, Mr. Villa.

6 Ms. Jacks, do you have cross-examination
7 of Mr. Acee on behalf of Mr. Sanchez?

8 MS. JACKS: I do, Your Honor. Thank you.

9 THE COURT: Ms. Jacks.

10 CROSS-EXAMINATION

11 BY MS. JACKS:

12 Q. Good afternoon, Agent Acee.

13 A. Ms. Jacks.

14 Q. I noticed earlier, when Ms. Armijo was
15 asking you questions, that instead of looking at her
16 when you'd answer, you sort of turned to the jury to
17 answer. You realize you were doing that; right?

18 A. I try to do that when answering.

19 Q. Okay. And that's something that you're
20 actually trained to do as part of your -- as part of
21 your law enforcement training?

22 A. I don't recall if that's training. I just
23 think it's polite. It seems like why we're here.

24 Q. So you weren't trained on that? You
25 weren't trained on ways to testify to juries?

1 A. I was trained on how to testify. I don't
2 know that they added the caveat "to juries."

3 Q. And in that training, were you taught to
4 turn and swivel your chair over and look at the
5 jury?

6 A. I've answered. I don't know that I was
7 taught that. That was about 20 years ago.

8 Q. All right.

9 MS. JACKS: Can we have exhibits starting
10 with 548? Thank you.

11 Q. And this is the series of pictures that
12 Mr. Castellano showed you of Mr. Sanchez?

13 A. Yes, ma'am.

14 Q. I have just a couple of general questions
15 first. You were shown a bunch of different
16 photographs, and you were asked about a bunch of
17 different tattoos. On some of your answers you said
18 things like -- and this was in reference to Timothy
19 Martinez, one of the photos, you said none of those
20 tattoos were gang-specific. And think for some of
21 the other pictures you were shown, you said, quote,
22 "The tattoos don't mean anything." Do you recall
23 those answers?

24 A. Yes, ma'am.

25 Q. Okay. So I guess my question is: When

1 you testify about a tattoo, was that meant to imply
2 that it meant something? Do you know what I mean?
3 Like if you said something about a tattoo, does that
4 mean, in your mind, it had some significance?

5 A. Yes.

6 Q. Okay. Because you testified about a bunch
7 of tattoos regarding Mr. Sanchez, and I want to ask
8 you about that. But before I do, would you agree
9 with me that New Mexico State prisons are, for the
10 most part, filled with New Mexico state residents?

11 A. Yes.

12 Q. All right. And are tattoos popular in
13 prison?

14 A. Yes.

15 Q. I mean, they're popular outside of prison,
16 too, these days; right?

17 A. I agree.

18 Q. But in prison, if you -- I mean, wouldn't
19 the majority of inmates in prison be tattooed?

20 A. The ones I've seen, yes.

21 Q. In some manner.

22 A. Yes.

23 Q. Would it almost be shocking to find a
24 prison inmate in the state of New Mexico that had no
25 tattoos?

1 A. Maybe in the white-collar section or
2 something.

3 Q. Do you know why tattoos are popular in
4 prison?

5 A. Yes.

6 Q. Why?

7 A. To display various things. In some cases,
8 gang membership; in others, pride in certain things.
9 Sometimes they display family names. I think
10 there's a number of reasons.

11 Q. Okay. And it's also against the rules to
12 get a tattoo in prison, isn't it?

13 A. While you're in prison, yes.

14 Q. Right. So in some ways, by getting a
15 tattoo while you're in prison, the person is sort of
16 displaying an act of rebellion against the prison.

17 A. I don't know what they're displaying, but
18 they're getting tattoos.

19 Q. People get tattooed in prison all the
20 time, even though it's against the rules.

21 A. Yes.

22 Q. And Mr. Castellano asked you some
23 questions -- well, let me go back for a second. Do
24 you think it has anything to do with the boredom of
25 prison that people get tattooed?

1 MR. CASTELLANO: Objection, calls for
2 speculation.

3 THE COURT: Ask him if he knows.

4 BY MS. JACKS:

5 Q. If you know. That's all I'm asking.

6 A. I don't know.

7 Q. Mr. Castellano asked you some questions
8 about popular tattoos, and I think you said one
9 subject matter of popular tattoos is women.

10 A. Yes.

11 Q. Why do you think that tattoos of women,
12 and in particular, partially clothed or naked women
13 are popular in prison?

14 A. Because a prison is full of men.

15 Q. And another popular tattoo is, I think you
16 said, guns.

17 A. I don't think I said that. I think I
18 pointed out a gun.

19 Q. Why would a prison inmate have a tattoo of
20 a gun? What does an image of a gun convey?

21 A. Violence.

22 Q. Power?

23 A. Yes.

24 Q. Toughness?

25 A. Yes.

1 Q. Those are all qualities that, in prison,
2 someone would want to communicate to others; right?

3 A. Yes.

4 Q. So that people leave you alone.

5 A. For a number of reasons, that among them.

6 Q. That's a big reason; right?

7 A. Yes.

8 Q. And then the other tattoo I think you
9 talked about was tattoos involving dollar signs or
10 money.

11 A. Yes.

12 Q. And what is that, in your opinion? What
13 is that meant to convey?

14 A. Wealth, what you value, money, women, a
15 hard life, guns, toughness.

16 Q. Going back to the money, is valuing money
17 or worshiping money isolated to the prison
18 environment?

19 A. No.

20 Q. I mean, that's kind of, at least for a lot
21 of people in the United States, almost a religion;
22 right?

23 A. Sure.

24 Q. So tattoos of women, guns, and money don't
25 necessarily mean that a person is affiliated with

1 either a street gang or a prison gang?

2 A. I wouldn't say that, no. I'm not claiming
3 that those tattoos alone mean anything more than
4 what you've described.

5 Q. Okay. Let's just look at the pictures of
6 Mr. Sanchez for a second, and let's start with what
7 you had up there, 548. And I'm just going to sort
8 of flip through them, because I don't have them
9 memorized. So let's go. This is Mr. Sanchez the
10 morning that everybody was arrested on this
11 indictment; right?

12 A. In phase 1, yes, ma'am.

13 Q. And where was he picked up from?

14 A. Penitentiary of New Mexico -- no. Well,
15 excuse me. He was in Massachusetts, and we caused
16 him to be transferred back to New Mexico. And I
17 think he went to the Pen. I hesitate, because he
18 could have been at Central, because that's their
19 processing center. Either way, he was in a State of
20 New Mexico prison.

21 Q. And you just don't remember right now
22 which one?

23 A. I think he was at the North, but he could
24 have been at Central.

25 Q. So he was driven from prison to this

1 office in Albuquerque where he was photographed;
2 right?

3 A. Yes.

4 Q. Okay. Let's go to the next picture. This
5 is 549. All right. Now, you testified about this
6 when Mr. Castellano asked you some questions. This
7 is a tattoo on Mr. Sanchez's stomach; right?

8 A. There is a tattoo on his stomach, but I
9 didn't talk about it.

10 Q. What is the tattoo on the stomach?

11 A. It looks like a depiction of The Last
12 Supper.

13 Q. So would that be a religious tattoo?

14 A. I believe so.

15 Q. And the things you testified about were
16 the N and M on his arms?

17 A. Yes, ma'am.

18 Q. Is Mr. Sanchez from the state of New
19 Mexico?

20 A. He is.

21 Q. And do you know where?

22 A. Belen.

23 Q. And N and M -- are those the initials for
24 the state of New Mexico?

25 A. Right.

1 Q. And is it uncommon for prison inmates from
2 the state of New Mexico to have the N and the M,
3 signifying they're from the state of New Mexico?

4 A. No.

5 Q. And the N and the M alone, with nothing
6 else, don't signify any sort of membership in a
7 prison gang or street gang, do they?

8 A. I agree with you.

9 Q. You agree with me that they don't?

10 A. They don't.

11 Q. Can we have the next one, which would be
12 550? That's just the N that we just talked about;
13 right?

14 A. Yes, ma'am.

15 Q. Can we go to the next one? There is the
16 M, so that's 552.

17 Can we go to the next one, 553?

18 All right. In this picture, in Exhibit
19 553, I think you testified about the symbol on Mr.
20 Sanchez' -- I guess it would be left elbow?

21 A. Yes.

22 Q. And what is that symbol?

23 A. Zia.

24 Q. Okay. What is the Zia symbol?

25 A. The Zia symbol is the same symbol you see

1 on the New Mexican flag. I can't tell you the
2 history of the Zia.

3 Q. And it's on street signs in New Mexico;
4 right?

5 A. It is.

6 Q. Coffee cups, license plates, T shirts,
7 bumper stickers?

8 A. And other places, as well.

9 Q. It's displayed everywhere throughout the
10 state, isn't it?

11 A. It's in a lot of places around the state.

12 Q. As a symbol of pride for the state of New
13 Mexico?

14 A. I agree.

15 Q. Now, is the fact that Mr. Sanchez has a
16 Zia tattoo on his elbow some indication that he's a
17 member of a prison gang?

18 A. Could be. Would you like me to explain?

19 Q. No, because I'm going to ask you another
20 question. You said it could be, but you would agree
21 with me that it also couldn't be; right?

22 A. Right.

23 Q. It may be; it may not be?

24 A. Correct.

25 Q. Now, is there a particular tattoo that is

1 identified with the SNM Gang that involves the Zia
2 symbol?

3 A. Yes.

4 Q. And can you describe that?

5 A. It is the Zia symbol in the old days; and
6 then more commonly now it's the Zia symbol with an S
7 in it, because other gangs have adopted the Zia
8 symbol.

9 Q. So can we have -- let me just see if I
10 can -- can we have Exhibit 604, please?

11 And 604 I think was one of the photographs
12 of Jerry Montoya; is that right?

13 A. It is.

14 Q. And can you describe here what the tattoo
15 that we're viewing in this photograph is?

16 A. Behind Mr. Montoya's ear is a tattoo of
17 the Zia symbol with an S in the center.

18 Q. And that's a tattoo that is unique to the
19 SNM Gang; is that right?

20 A. It is.

21 Q. And people that display that tattoo are
22 identified or are in the SNM Gang?

23 A. Better be.

24 Q. You can't -- at least in prison, you can't
25 display a tattoo like this unless you're a member of

1 SNM.

2 A. Well, you could. And I understand one or
3 two people have. But it's going to cause you
4 problems.

5 Q. So it would be unlikely that someone would
6 do that?

7 A. Yes.

8 Q. Can we see 637?

9 This is David Calbert?

10 A. Yes.

11 Q. And can we see 638? I think it's a
12 close-up of a similar tattoo.

13 Can you describe what we're seeing here on
14 Mr. Calbert in this photograph?

15 A. The chin and the neck, or just the neck?

16 Q. The neck.

17 A. On his neck he has a Zia symbol with an S
18 in the middle.

19 Q. And again, that's the type of Zia symbol
20 with the S in the middle that would be displayed by
21 SNM Gang members?

22 A. Yes.

23 Q. And the fact that -- the picture also
24 displays an S on Mr. Calbert's chin; right?

25 A. Yes.

1 Q. And that's a tattoo associated with the
2 SNM Gang?

3 A. Yes.

4 Q. So the fact that somebody would have a
5 tattoo like that, the S or the S with the Zia symbol
6 on their chin and neck -- is that of particular
7 significance?

8 A. Yes.

9 Q. Why?

10 A. You want everybody to see it.

11 Q. No way to cover it up; right?

12 A. No way to cover it up.

13 Q. So when Mr. Calbert walks out onto the
14 prison yard, everybody knows right away what he's
15 claiming.

16 A. Correct. Unless he grows his beard out, I
17 guess.

18 Q. And could we have 569?
19 Is this Roy Paul Martinez?

20 A. Yes.

21 Q. Exhibit 569?

22 A. Yes.

23 Q. And I think the close-up is the next
24 slide, 570. What's the tattoo that we see on Mr.
25 Roy Paul Martinez' stomach?

1 A. It's a Zia symbol and it has an S over an
2 N-M.

3 Q. So he's got all three initials in the
4 middle of the Zia symbol.

5 A. Correct.

6 Q. Is that a tattoo uniquely associated with
7 the SNM?

8 A. It is.

9 Q. Can we go back now -- I'm sorry. Why
10 don't we start -- I think we're at 550, with Mr.
11 Sanchez. Let's go to 551.

12 Is there anything other than the M that's
13 of significance in this photograph, 551, of Mr.
14 Sanchez?

15 A. Well, there's a lot of things significant
16 to me, but I think Mr. Castellano wanted
17 gang-specific tattoos.

18 Q. Right. So nothing gang-specific?

19 A. No.

20 Q. Can we go to 552?

21 And this is Mr. Sanchez' other arm?

22 A. Yes.

23 Q. Also displaying a Zia symbol with nothing
24 in the middle? It may be shown better in 553. Is
25 it?

1 A. It shows the Zia symbol on his elbow.

2 Q. Okay. Can we go to 554?

3 Now, you testified about Mr. Sanchez' back
4 when Mr. Castellano was asking you some questions.
5 We see his name; right?

6 A. Yes.

7 Q. Is that a tattoo that's affiliated with
8 his -- with some sort of street gang or prison gang
9 membership?

10 A. Not his name, no.

11 Q. And what about his hometown, Belen?

12 A. Could be.

13 Q. Could be and could not be; right?

14 A. I'd have to, yeah, talk to him and find
15 out.

16 Q. Based on what you know sitting up there on
17 the witness stand, you don't know one way or the
18 other, do you?

19 A. I actually don't believe he was part of a
20 street gang.

21 Q. So in other words, that may just be Mr.
22 Sanchez putting the name of his hometown on his
23 neck?

24 A. Yes.

25 Q. And this female wearing a sombrero that

1 says "Sanchez" on it -- what's the significance of
2 that, if any, to determining whether Mr. Sanchez is
3 a member of SNM?

4 A. Some of the older SNM members have
5 explained to me that --

6 Q. I'm going to stop you right there, because
7 that would be hearsay; right?

8 A. Okay.

9 Q. So if you just tell me what you think the
10 significance is yourself, if you know.

11 A. It could signify membership in the SNM.

12 Q. Do you know, with respect to Mr. Sanchez,
13 what the meaning of that tattoo is?

14 A. No.

15 Q. And the fact that he has it -- you're not
16 able to say this shows that he's a member of SNM;
17 right?

18 A. Based on the tattoo alone, no.

19 Q. Can we go to the next one?

20 This is just another side shot. If there
21 are more pictures you want to see, let me know. But
22 I want to ask you this question. Based on your
23 review of the tattoos that Mr. Sanchez displayed --
24 let me go back a second. We've seen examples of
25 people that were claiming street gang membership and

1 they had tattoos consistent with being a street gang
2 member. I think I recall on one leg it would say
3 "west," on the other leg it would say "side," things
4 like that.

5 A. Yes.

6 Q. Burquenos on somebody's stomach, I think?

7 A. It shouldn't say that. But maybe Burque,
8 or something like that. Another gang.

9 Q. So my question to you is: Does Mr.
10 Sanchez, based on your inspection of his body, have
11 any tattoos that signify some sort of street gang
12 membership or affiliation?

13 A. I didn't see any street gang affiliation.

14 Q. And does he have any tattoos of peacocks,
15 which, for some reason, you're saying is associated
16 with the SNM?

17 A. I didn't see any.

18 Q. And does he have any tattoos of Zia
19 symbols that are filled in in the middle displaying
20 either S, or SNM, or anything of that nature?

21 A. He has Zias, but not with an S in them.

22 Q. Now, do you know when Mr. Sanchez got --
23 let me go back a second. Does Mr. Sanchez have a
24 tattoo of Pancho Villa on his body?

25 A. He may. I'd have to look closer.

1 Q. Do you know what the significance or why
2 somebody would have a Pancho Villa tattoo?

3 A. Heritage. Could be just pride in one's
4 ethnicity.

5 Q. Do you know when Mr. Sanchez got any of
6 these tattoos?

7 A. I do not.

8 Q. Do you know where he got any of the
9 tattoos?

10 A. I suspect in prison.

11 Q. But we're here in court, and I guess we
12 operate on things that people know and can prove.
13 So my question again is: Do you know where he got
14 these tattoos?

15 A. No.

16 Q. Can we have Exhibit 574, please.

17 This is a person you also -- that was also
18 arrested on December 3, 2015?

19 A. Yes.

20 Q. Who is it?

21 A. Robert Martinez.

22 Q. Was Robert Martinez arrested in prison or
23 jail, or was he arrested on the streets?

24 A. In prison.

25 Q. Where was he housed when he was arrested?

1 A. PNM.

2 Q. I want to follow up just on a few
3 questions that Mr. Lowry asked you. I think he
4 asked you some questions about Eric Duran and your
5 supplying a cellphone to Mr. Duran. Do you recall
6 those questions?

7 A. I do.

8 Q. And your testimony is that you gave
9 Mr. Duran -- you bought a cellphone for Mr. Duran
10 and you gave it to him so he could assist you in
11 investigating this case.

12 A. Yes.

13 Q. And he gave you that assistance and ended
14 up getting out of jail early on his sentence?

15 A. He got out of prison early.

16 Q. And you relocated him?

17 A. Yes.

18 Q. And you got him a job working for a
19 different federal law enforcement agency?

20 A. I transferred him to another division, and
21 it was up to those agents if they wanted to work
22 with him. I just made the introduction.

23 Q. And they, in fact, did work with him and
24 pay him; right?

25 A. They did.

1 Q. Up until when he got arrested again?

2 A. Yes, shortly. They stopped working with
3 him a little bit before then, because it took us a
4 little while to find him.

5 Q. Well, he got arrested. Do you remember
6 when?

7 A. No. I turned over all the reports, but --

8 Q. Was it fairly recently, like, was it in
9 the fall of 2017?

10 A. Yes. I'm just not sure which arrest
11 you're asking me about.

12 Q. Okay. He was arrested several times?

13 A. Throughout his life he has been.

14 Q. I want to go back to the phone that you
15 gave him, because you gave it to him for federal
16 government business; is that right?

17 A. Yes.

18 Q. And at least in part, he used it for
19 federal government business.

20 A. He did.

21 Q. Did he also use it to gamble in a
22 rotisserie football league?

23 A. I don't know if he gambled. I know that
24 he accessed -- what's it called -- fantasy football
25 on the phone.

1 Q. And in fact, if you look at the text
2 messages on the phone, he's giving instructions
3 about what he wants to bet, and where and when and
4 which players he wants to play; right?

5 A. I agree with all that except the betting
6 part. I don't know -- I don't play fantasy
7 football, so I'm not sure if there is betting
8 involved. But he's picking players; that's obvious.

9 Q. So he's used a Government-issued cellphone
10 to play fantasy football while he was sitting in
11 prison.

12 A. He did until I told him to stop, until I
13 noticed his data was -- he was using too much data,
14 and I asked him about it.

15 Q. You have recordings of the phone calls
16 that he's made; right?

17 A. Yes.

18 Q. And do you also have copies of the text
19 messages that he sent?

20 A. Yes.

21 Q. Have you listened to those?

22 A. I have not listened to all of the phone
23 calls, but other agents have.

24 Q. And people have reported to you, as the
25 agent in charge, what they're finding on this phone;

1 right?

2 A. Yes, ma'am.

3 Q. Did he use the phone to engage in phone
4 sex with his girlfriend or wife?

5 A. No, I don't think so.

6 Q. Did he use the phone to solicit money from
7 females?

8 A. I don't think he used the Government phone
9 for that.

10 Q. Did he use the phone to talk and exchange
11 photographs with a stripper?

12 A. He had contact with some females, and I
13 think one of them was a stripper.

14 Q. And he's doing this from inside the
15 prison; right?

16 A. Yes.

17 Q. On the Government-issued phone.

18 A. Yes.

19 Q. That's for Government business.

20 A. Yes.

21 Q. Did he use the phone to talk to his family
22 members?

23 A. I don't believe so.

24 Q. Did he use the phone to text with his
25 family members?

1 A. Yes.

2 Q. Did he use the phone to text with you?

3 A. Yes.

4 Q. You were asked some questions, I think, by
5 quite a few lawyers about Billy Cordova, and I want
6 to follow up on a couple of things. Mr. Cordova was
7 an individual who agreed to become a Government
8 witness; is that right?

9 A. Yes.

10 Q. And I think you testified and had an
11 exchange with Mr. Villa about the first meeting
12 where you were expecting him to basically tell you
13 to get lost, and he came in smiling and was
14 agreeable to cooperating.

15 A. Yes.

16 Q. Okay. Do you know if, prior to that
17 meeting, Mr. Cordova had any contact with any other
18 cooperators in this case, any other people that were
19 working as Government witnesses?

20 A. He would have had contact with at least
21 one, because I was up at the jail to visit a
22 cooperator that was housed in his pod.

23 Q. Do you know, prior to meeting you, what
24 Mr. Cordova knew about the type of benefits and
25 promises the Government was providing cooperating

1 witnesses in this case?

2 A. No, he wouldn't have known.

3 Q. You're saying he wouldn't have known?

4 A. He would not have known. The informant at
5 the jail was not an FBI informant. It was a County
6 informant.

7 Q. But do you know whether Mr. Cordova had
8 contact with others aside from that person that
9 you're thinking about?

10 A. Yes, he did. He was in an SNM pod, but I
11 didn't have cooperators in there.

12 Q. But word gets around prison pretty quick,
13 doesn't it?

14 A. Word can travel around prison quickly.

15 Q. And you weren't with Mr. Cordova all the
16 time, were you?

17 A. No.

18 Q. So all you know is what he decides to tell
19 you.

20 A. At any given time, I only know what people
21 decide to tell me.

22 Q. When you met with Mr. Cordova to see if he
23 wanted to be a Government witness, did you threaten
24 to charge him in a racketeering case?

25 A. Yes.

1 Q. Did you threaten to charge him in a case
2 that carried punishment of the federal death
3 penalty?

4 A. No.

5 Q. Did you threaten -- Mr. Cordova has a
6 brother; right?

7 A. I don't -- he does have a brother.

8 Q. Did you talk to Mr. Cordova about things
9 his brother did to assist Mr. Cordova in his
10 criminal activity and threaten to charge his
11 brother?

12 A. No, nothing like that.

13 Q. Did you promise Mr. Cordova money?

14 A. No.

15 Q. Did you promise him a job, the kind of job
16 that Mr. Duran got after he got out of the prison?

17 A. No.

18 Q. Never discussed that with him?

19 A. It was discussed on his end. He wanted to
20 do those kind of things.

21 Q. What made him think that that's the kind
22 of thing you were doling out?

23 A. A lot of guys like working with us after
24 they try it. They like still getting the hustle,
25 and do stuff; but they're doing it for the FBI now.

1 And that's not uncommon over the years.

2 Q. I guess my question is -- I mean, that may
3 be true; right? But he also may have asked you
4 because he knew you gave it to somebody else.

5 A. He may have. He definitely wanted to work
6 on the streets after his cooperation. But he wanted
7 to do it in New Mexico, and that was never going to
8 happen.

9 Q. My question is just simply: How did he
10 know to even bring that topic up with you? And
11 you're saying maybe he just brought it up because he
12 realized that maybe you did stuff like that. But
13 maybe he brought it up because he knew that somebody
14 else got that.

15 A. Maybe he watches television. I don't know
16 where he got it from. But he definitely asked me,
17 and I didn't want to do that.

18 Q. Now, Mr. Maynard asked you some questions
19 about Government witnesses making repeated
20 statements. Do you recall those questions?

21 A. Yes.

22 Q. And about the statements being different
23 from -- you interview them on day one; they say one
24 thing. You interview them three months later, and
25 they say something slightly different, maybe add a

1 few details. You interview them six months later,
2 and the statement is maybe more details, a little
3 bit different than what they told you before.

4 A. There is a lot in what you just said, but
5 no, my recollection -- and it is my testimony that
6 it's not that the details changed; it's that, in
7 questioning them -- these are incidents, in some
8 cases, that are several years old. And going back,
9 sleeping on it, thinking about it, they have more to
10 tell me about it. It's not that -- I can't think of
11 any instances where the details were different, like
12 it didn't happen this way; it actually happened this
13 way. Rather, it was just them expounding on what
14 they originally told me.

15 Q. Maybe more embellished statements is what
16 you were referring to when you were talking to Mr.
17 Maynard.

18 A. No, I wouldn't agree with "more
19 embellished"; maybe just more details.

20 Q. You would agree with me that the
21 Government witnesses in this case had access to
22 computerized tablets that contain what's called the
23 discovery in the case.

24 A. For some period of time they did.

25 Q. And in addition to police reports, what

1 sorts of other things are in that body of what's
2 called discovery?

3 A. Everything that we've uncovered in our
4 investigation, we, the FBI, turn over to the U.S.
5 Attorney's Office, who in turn sends all that
6 discovery to a coordinator, who causes it to be put
7 on the tablets so that the defendants can review it.
8 It contains reports of videos -- not only our
9 reports, but State Police reports, prison reports.

10 Q. Witness statements?

11 A. Statements made by witnesses, victims.

12 Q. Recordings of witness statements?

13 A. Where available, yes.

14 Q. Recordings of telephone conversations?

15 A. Yes.

16 Q. It contains a whole variety of information
17 about the Government's investigation.

18 A. Correct.

19 Q. And you'd also agree with me that the
20 Government witnesses in this case have had access to
21 each other over the period of the investigation.

22 A. Some of them have. Some have never seen
23 one of the other cooperators.

24 Q. But some of them were housed together so
25 they could spend 24 hours a day, seven days a week

1 together.

2 A. Well, it is a prison. They're still in
3 individual cells, but they had some tier time
4 together; not 24/7.

5 Q. And as you know, people can talk between
6 cells, too, can't they?

7 A. You can talk to your neighbors. You can't
8 talk a few cells away.

9 Q. But I think what you said, when one of the
10 other lawyers was asking you questions, is that
11 because these people were Government witnesses, they
12 were maybe held in Level 6 confinement, but given
13 Level 4 confinement conditions.

14 A. Some conditions. That's my understanding.

15 Q. Which meant that they had much more time
16 outside of their cell when they could interact and
17 speak with each other.

18 A. Than a Level 6 inmate? Absolutely. They
19 had Level 4 privileges.

20 Q. And did you ever at times either encourage
21 or enable one Government witness to meet with
22 somebody else that you wanted to be a Government
23 witness?

24 A. Yes.

25 Q. And when you did that -- you did that more

1 than once, didn't you?

2 A. Well, I hesitate, because some of them
3 have attorneys, and they can't do it when they have
4 an attorney. But in instances where somebody didn't
5 have an attorney and hadn't been charged, I would
6 ask them, "Hey, do you think this guy would
7 cooperate?" I'd feel them out for that member
8 because I hadn't talked to them yet.

9 Q. And then you said you'd set up some sort
10 of meeting or conversation between the two inmates
11 to see what would come of it.

12 A. I have done that before, yes.

13 Q. All right. And when you do have a
14 Government witness and you set up a meeting like
15 that, is there something that that Government
16 witness is potentially benefiting from if the person
17 you're sending him out to talk to decides to also
18 become a Government witness?

19 A. There could be.

20 Q. What is it that you tell these Government
21 witnesses about those kinds of contacts and the
22 potential benefits?

23 A. I don't know that I tell them anything
24 other than that I want to talk to them. If it's
25 someone that has pending charges in this case, for

1 instance, I'm aware that to the extent they help us,
2 we'll make that known to the judge at the end of the
3 case.

4 Q. Do you communicate to the witness that "If
5 you bring somebody else on board, that's going to
6 look good for you and help reduce your sentence"?

7 A. No, I always hesitate to talk about the
8 reduction of their sentence, because I'm not part of
9 that process. As far as what I typically tell them,
10 if I were speaking to you, is, I would say, "To the
11 extent that you help me with my investigation, I'll
12 make that known. If you want to call me as a
13 witness to have your attorney ask me questions about
14 how you helped me, I promise you I will answer all
15 those questions honestly, and I'll show up for
16 court."

17 Q. Why would somebody want that, quote,
18 "known"?

19 A. Well, we've alleged, you know, violent
20 crimes and terrible things. And I think that type
21 of characterization of them now maybe changing their
22 life and helping the Government and turning the
23 corner -- I think that might be favorable to them,
24 and their attorneys might want to call me to provide
25 that testimony to the Court.

1 THE COURT: Ms. Jacks, would this be a
2 good time --

3 MS. JACKS: We can. I mean, I'm probably
4 going to wrap up, but I hate to hold people over.
5 That's fine.

6 THE COURT: Thank you, Ms. Jacks.

7 All right. Since we're going to be taking
8 our first break in the evidence overnight, I'm going
9 to remind you of a few things that are especially
10 important. Until the trial is completed, you're not
11 to discuss the trial with anyone or the case with
12 anyone, whether it's members of your family, people
13 involved in the trial, or anyone else. And that
14 includes your fellow jurors. If anyone approaches
15 you and tries to discuss the trial with you, please
16 let me know immediately.

17 Also, you must not read or listen to any
18 news reports of the trial. Again, don't get on the
19 internet and do any research for purposes of this
20 case.

21 And finally, remember that you must not
22 talk about anything with any person who is involved
23 in the trial, even if they don't have anything to do
24 with the trial. If you need to speak with me,
25 simply give a note to one of my court security

1 officers or to Ms. Standridge.

2 I'll start decreasing these tomorrow, but
3 do keep them in mind each time we take a break,
4 because they are very, very important.

5 Thanks for your hard work. Let's do the
6 schedule we did today. Be in there at 8:30, and
7 we'll try to be ready for you at that time, as well.
8 Have a good evening. Be safe if you're driving out
9 of town. See you in the morning.

10 (The jury left the courtroom.)

11 THE COURT: All right. Y'all have a good
12 evening. See y'all tomorrow.

13 (Court was in recess at 5:33 p.m.)

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1 Thursday, February 1, 2018

2 THE COURT: All right. Good morning
3 everyone. I appreciate everybody being here ready
4 to go on time.

5 A couple of things. One is, because of
6 the problem with real-time, I think what we're going
7 to do is just run it at the Court and run it with
8 Ms. Standridge. And then Ms. Bean has got a part
9 coming in that should be on Fed Ex this morning to
10 arrive and we'll give it another try. But we've got
11 so many computers on the system that it's not
12 working. So I think it's more important that Ms.
13 Standridge have it and the Court have it than y'all
14 have it for a little bit. But we'll try to get that
15 back up.

16 I received a note from one of the jurors.
17 This is Sylvia Sauer. She's juror number -- sits
18 right in the middle of the front row, from Torreon.

19 It says, "February 1st. Your Honor, my
20 maiden name is Rodriguez. Is that a problem? No
21 relationship. Thank you. Sylvia Sauer."

22 What I would propose to do with this,
23 unless somebody thinks different, is just have maybe
24 Ms. Standridge confirm that when she says, "No
25 relationship," what she's telling the Court is that

1 she didn't have a relationship with any of the
2 Rodriguezes that were mentioned yesterday. I assume
3 that's what she means by it. And if she says, "No
4 relationship," then just tell her there is no
5 problem.

6 Does anybody have any other -- is that
7 acceptable to do it that way, Ms. Armijo?

8 MS. ARMIJO: Yes, Your Honor, it is.
9 Thank you.

10 THE COURT: Does that work for the
11 Defendants?

12 MS. JACKS: Yes, Your Honor.

13 MR. VILLA: Yes, Your Honor.

14 THE COURT: All right. I'm going to have
15 Ms. Standridge mark the note as -- what will that be
16 to your clerk's minutes now?

17 THE CLERK: E.

18 THE COURT: So it will be marked as
19 Clerk's Exhibit E.

20 All the jurors are here and ready to go.
21 Does anybody have anything they need to discuss
22 before we go on the record?

23 MS. ARMIJO: Yes, Your Honor. We filed a
24 motion this morning regarding Mr. Lowry, and we just
25 would like to briefly be heard.

1 THE COURT: Okay. Is the motion
2 sufficient for me to -- for you to be heard on it?

3 MS. ARMIJO: I believe it is. But we
4 would at least just like to -- just maybe two
5 minutes or less.

6 THE COURT: All right. I'd like "the
7 less."

8 MS. ARMIJO: I'll try, Your Honor.

9 Your Honor, I believe why this is an issue
10 now is that previously the Court found under the
11 Rules of Professional Conduct that this was an issue
12 that fell under 16-109(c), because all we
13 concentrated on in the former hearings regarding
14 conflict dealt with whether or not the prior
15 representation was SNM-related. And I believe even
16 the United States at that point was not as strongly
17 advocating for it because it wasn't the Mike Davis
18 situation.

19 However, based upon -- at that time, the
20 defense never informed any of the parties -- the
21 defense for Mr. Baca, that is -- that they would be
22 using this lawsuit as part of their defense. When
23 that became evident last night or yesterday, it now
24 falls under 16-109(a), subsequent representation.
25 Now it's a substantially related matter, which are

1 material adverse.

2 And I would just ask the Court -- what the
3 Court needs to figure out now is if Mr. Donatelli
4 were standing there representing Mr. Baca, that is
5 the test that the Court should prove; not that it's
6 Mr. Lowry because it is all imputed to him.

7 So if the Court believes that Mr.
8 Donatelli would be able to sit there next to Mr.
9 Baca and represent him, that is the test that the
10 United States is requesting the Court do. And based
11 on the fact that now it is substantially related and
12 it's materially adverse to him, then Mr. Baca has
13 the right to adverse-free counsel, and it is not
14 something that either former client or present
15 client can waive. That's the gist of it, Your
16 Honor.

17 THE COURT: All right. Thank you, Ms.
18 Armijo.

19 All right. Anything else from the
20 Government before we bring the jury in?

21 MS. JACKS: Your Honor, I do have one
22 thing, but it can wait for a recess. We don't have
23 to do it now.

24 THE COURT: What's the nature?

25 MS. JACKS: It's in regard to the bench

1 conference yesterday regarding the testimony of
2 Agent Acee that two of the trial defendants have
3 another pending matter.

4 THE COURT: I'm sorry, I'm not tracking
5 that.

6 MS. JACKS: Ms. Gilbert has the page from
7 the transcript. There was a bench conference -- I'm
8 going to come over here -- there was a bench
9 conference roughly around 4:00 yesterday afternoon,
10 or maybe 3:30, during Mr. Castellano's direct
11 examination of Agent Acee. Agent Acee testified
12 that two of the trial defendants have another
13 pending criminal matter. And there was an objection
14 to that, and there was a motion for a mistrial by
15 Ms. Duncan. We objected. I wanted to join Ms.
16 Duncan's motion for a mistrial.

17 Here's the question. I sent you the wrong
18 page. That's not it.

19 MS. GILBERT: Sorry.

20 MS. JACKS: We can take it up later.

21 THE COURT: You're joining the motion, is
22 what you need to do?

23 MS. JACKS: Yes. And I think we left the
24 situation uncured, so I wanted to discuss that with
25 the Court.

1 THE COURT: Okay. We did leave it
2 uncured. Nobody liked my solutions. And they may
3 not have been good ones. But I didn't have a
4 solution.

5 Do you have a solution with Mr. Acee? I
6 think Mr. Villa sort of cleared it up with his
7 client.

8 MS. JACKS: I think where it's left is
9 that Mr. Sanchez and Mr. Baca haven't cleared it up
10 because they can't, because the truth is, they do
11 have another pending case.

12 THE COURT: Okay. All right. If nothing
13 else, why don't we go ahead and bring the jury in.
14 If anybody has got anything else they want to say
15 while Ms. Standridge is lining them up?

16 MR. CASTELLANO: Mine is short, Your
17 Honor. Pretrial, the parties agreed that they would
18 not discuss personal issues with each of the
19 witnesses, where they live, about family, things of
20 that nature. So in opening statement Mr. Lowry, I
21 think, referred to the fact that Mr. Duran moved to
22 a specific location as opposed to a general area.
23 So I just want to make sure we stay away from asking
24 witnesses the personal types of questions like that.

25 THE COURT: All right. Can you get the

1 information out without getting into where they're
2 moving?

3 MR. LOWRY: Yes, Your Honor.

4 THE COURT: I don't mind you saying, "They
5 moved you," and all that, "and got you out of town,"
6 or something like that. But if we can just maybe
7 not get their specific locations.

8 Did you have anything else? Did you have
9 a proposal, Ms. Jacks? Do you have something you
10 want to try to do or --

11 MS. JACKS: Well, Your Honor, I wanted to
12 point out two things. I wanted to point out, number
13 1, that if you go back and look at the record of the
14 objectionable testimony, the answer that Agent Acee
15 gave was completely nonresponsive to Mr.
16 Castellano's question. So the information was just
17 sort of thrown out there for no reason.

18 I think the second thing is that the Court
19 clearly recognized that a comment like that, that a
20 trial defendant has other pending matters, causes
21 serious prejudice and needs be addressed.

22 THE COURT: I'm not sure I buy into that.
23 There were so many discussions of so many cases and
24 so many charges, you know, I must say that until it
25 was pointed out, I didn't catch it. But --

1 MS. JACKS: Well, I think the objection
2 that we had to the Court's solution was, it was
3 essentially directing the U.S. Attorney to have
4 Agent Acee testify to something that was untrue.
5 And I don't think anybody in this courtroom thinks
6 that's appropriate.

7 THE COURT: That's fair. I mean, I was
8 trying to come up with a solution, and I accept the
9 parties' thoughts that that would not be a good
10 solution. But if I don't -- I'm not seeing a
11 solution that is acceptable to everybody, so --

12 MS. JACKS: I actually came up with a
13 solution. I'm sure this won't be acceptable to
14 everybody. But if the Government and/or the Court
15 dismiss the pending charges against Mr. Baca and Mr.
16 Sanchez, then the Court can truthfully tell the jury
17 that nobody here has pending charges.

18 THE COURT: Okay. Well, I'm probably
19 not -- I'm not going to do that, at least on --
20 where the record stands.

21 But Mr. Acee, don't be dropping stuff like
22 that in there. If it's not being called for by Mr.
23 Castellano's questions or something, don't squeeze
24 anything in. You're going to create problems for
25 everybody in the room if you start talking about

1 other cases and stuff like that.

2 MR. CASTELLANO: And Your Honor, I cleaned
3 it up a little bit because I talked about the first
4 indictment and the second indictment and the first
5 two, Mr. Baca and Mr. Sanchez, being named in a
6 previous indictment. So I tried to gloss over that
7 and clean it up by saying they had been named in
8 another indictment related to this case.

9 THE COURT: And Mr. Villa did it with his.
10 And so, you know, there are just so many discussions
11 of cases and charges that are being thrown at the
12 jury at the very beginning. I just don't think it's
13 a serious problem. I don't want it to occur again.
14 I want to try to avoid it. But all right.

15 All rise.

16 (The jury entered the courtroom.)

17 THE COURT: All right. Everyone be
18 seated.

19 Good morning, ladies and gentlemen. Thank
20 for you being back and on time and ready to go. I
21 appreciate counsel doing the same thing. They were
22 in here very early, and we got a little bit of
23 business done, mechanics, before you got in. So I
24 appreciate the way everybody is going about their
25 task and keeping us on track. Thank you. You're a

1 good bunch to work with, and I really appreciate it.

2 All right. Mr. Acee, I'll remind you that
3 you're still under oath.

4 Ms. Jacks, if you wish to continue your
5 cross-examination of Mr. Acee, you may do so at this
6 time.

7 MS. JACKS: Thank you. I said I was
8 almost done, and I'm sticking to that.

9 THE COURT: All right. Ms. Jacks.

10 BRYAN ACEE,
11 after having been previously duly sworn under
12 oath, was questioned, and continued testifying
13 as follows:

14 CONTINUED CROSS-EXAMINATION

15 BY MS. JACKS:

16 Q. Good morning, Agent Acee.

17 A. Good morning.

18 Q. Yesterday just before we finished, we were
19 talking about when you interview Government
20 witnesses, sometimes their statements either change
21 or become more detailed as you speak to them over
22 time. Do you recall those questions?

23 A. Yes.

24 Q. And I think yesterday in response to a
25 question from Mr. Maynard, you said that the reason

1 that the statements change is that somebody went
2 back and thought about it a little more. I think
3 that's a direct quote.

4 A. Yes, ma'am.

5 Q. So I just want to talk to you a little bit
6 about that. That's your conclusion; right?

7 A. Yes.

8 Q. You don't have any special powers of --
9 special powers that allow you to know what your
10 Government witnesses are actually thinking; right?

11 A. I don't have any special powers.

12 Q. And you don't know what it is they might
13 have thought about; right?

14 A. No.

15 Q. So for example, they might have thought
16 about it a bit more. That's certainly one option;
17 right?

18 A. I believe that's the option, yes.

19 Q. And they might have thought that if they
20 jazzed up their statement a bit, they might get a
21 little bit more from you.

22 A. They don't get anything from me.

23 Q. Well, from the federal government they do.

24 A. I'm not sure about that.

25 Q. We just talked yesterday about they get

1 money, they've gotten privileges, they've gotten
2 family visits; right?

3 A. They do get those, but those don't have
4 anything to do with their statements.

5 Q. Okay. Well, that's your conclusion;
6 right?

7 A. I think that's a fact, but I don't want to
8 debate with you.

9 Q. Well, you're not inside the minds of these
10 Government witnesses, are you?

11 A. Of course not.

12 Q. And so you only know what they choose to
13 tell you in regards to their motivations; right?

14 A. Yes.

15 Q. Now, I want to move on a little bit just
16 to one other topic, and that is: You were asked
17 some questions yesterday about terminating some of
18 your Government witnesses as what I think you called
19 cooperators; right?

20 A. Their cooperation isn't terminated. But
21 what I'm able to terminate is the fact that they're
22 an FBI informant and they're receiving some payment
23 or other benefit from the FBI.

24 Q. Okay. And you terminated their status --
25 some Government witnesses, you terminated their

1 status as an informant based on their misconduct in
2 violation of their agreement with you.

3 A. Yes. That's why I terminated.

4 Q. And some of that misconduct was abuse of
5 the special visiting privileges that they were
6 provided by the Department of Corrections.

7 A. Yes.

8 Q. And that involved what?

9 A. My termination or --

10 Q. The abuse of the privileges. What did
11 they do?

12 A. Four of the informants that agreed to
13 cooperate had, I'll call it, sexual contact with
14 their wives or girlfriends during visits. And
15 that's not allowed. When I was made aware of it, I
16 addressed it with them and then terminated them.

17 Q. And where were these visits taking place?

18 A. They were at PNM in a small room that had
19 a camera. I couldn't tell you exactly where in the
20 facility, because I'm not that familiar with it.
21 But it was in a room with a table, some chairs. It
22 looked like a visiting room.

23 Q. So it was a small visiting room located at
24 the Penitentiary of New Mexico?

25 A. Yes.

1 Q. Inside a New Mexico State prison?

2 A. The Penitentiary of New Mexico is a state
3 prison, yes.

4 Q. And there's different facilities at the
5 Penitentiary of New Mexico. Was this the Level 6
6 facility?

7 A. Yes.

8 Q. So it was at the most secure facility in
9 the New Mexico State prison system.

10 A. Yes.

11 Q. And did the visiting room have -- was it
12 solid walls, or did it have windows and glass in the
13 door?

14 A. I don't know about the door, but it did
15 have windows. Otherwise, it was contained, a door
16 with -- I think it had two glass windows, a table in
17 the center, and two chairs on either side, and then
18 a camera mounted up in the corner.

19 Q. And do you know what the purpose of the
20 windows are in the visiting room?

21 A. I'd be speculating, but it should be for a
22 guard to be able to walk by and see what's occurring
23 in the room.

24 Q. Now, what do you know about -- and let's
25 just be very clear. These inmates were having

1 sexual intercourse, some of them, with their wives
2 in this visiting room with the window; right?

3 A. I think two had sexual intercourse, and
4 then two did other sexual things.

5 Q. Engaged in oral sex and fondling?

6 A. Yes.

7 Q. So when -- according to -- I mean, you're
8 the person that's in charge of these Government
9 witnesses; right? The buck stops with you, doesn't
10 it?

11 A. To some degree. I mean, from the FBI
12 perspective, it does. I can't control the
13 Department of Corrections.

14 Q. When was the first time that one of the
15 Government witnesses started having inappropriate
16 sexual relations in a visiting room at the most
17 secure prison in the state of New Mexico that has a
18 window in it?

19 A. I don't remember the exact date as I sit
20 here. What occurred was, the Department of
21 Corrections notified me that they had reviewed some
22 video. And then I asked them to go back and review
23 all videos of all visits, and then they found some
24 earlier incidents.

25 Q. So let me repeat my question. When was

1 the first time that happened?

2 A. I'll repeat my answer. I don't know the
3 exact date.

4 Q. Do you know the month and year that these
5 inappropriate sexual contacts began?

6 A. I think it was in early 2017. I can get
7 you an exact date. I just need some time to
8 research.

9 Q. I have the exact date. I'm asking you to
10 tell the jury what it is.

11 A. I don't know the exact date. I think it
12 was in early 2017.

13 Q. Do you know over how many months or weeks
14 this inappropriate sexual contact continued before
15 anything was done about it?

16 A. Would you like me to go down the different
17 defendants and answer that? The different
18 cooperators, I mean?

19 Q. I want you to start with the first
20 Government witness that had inappropriate sexual
21 relations, and go to the last time it happened, and
22 tell me what that time span was.

23 A. I'll have to give you approximate dates
24 because, again, I don't know as I sit here now, the
25 exact dates.

1 Billy Cordova had the first inappropriate
2 sexual contact. I think it was in early 2017. If I
3 remember correctly, he had at least four incidents
4 where this happened when the Department of
5 Corrections went back and reviewed videos.

6 I believe that Benjamin Clark had one
7 inappropriate touching, sexual in nature.

8 MS. JACKS: Your Honor, may I just
9 interrupt here? Because Agent Acee is not answering
10 the question. The question didn't ask him to list
11 the people and how many times. The question asked
12 him for a time span: One week, two weeks, three
13 months, whatever it was.

14 MR. CASTELLANO: I'm going to object, Your
15 Honor.

16 THE COURT: I'm going to -- the question
17 was: "I want you to start with the first Government
18 witness that had inappropriate sexual relations and
19 go to the last time it happened. And tell me what
20 that time span was."

21 MS. JACKS: That's correct. The time
22 span.

23 THE COURT: Well, there were three
24 questions there. And so if you want to break it
25 down and ask another -- but I'm not going to strike

1 that response.

2 MS. JACKS: Well, I'll break it down and
3 ask another.

4 MR. CASTELLANO: I'll object to asked and
5 answered.

6 THE COURT: Overruled. Overruled.

7 BY MS. JACKS:

8 Q. How many weeks total was this visiting
9 room being used for sexual relations with Government
10 witnesses?

11 A. I think about a month.

12 Q. Do you know?

13 A. I don't.

14 Q. And yet, you're in charge and the buck
15 stops with you; right?

16 A. That must be your opinion, because it
17 doesn't.

18 MS. JACKS: I have nothing further.

19 THE COURT: Thank you, Ms. Jacks.

20 Mr. Castellano, do you have redirect of
21 Mr. Acee?

22 MR. CASTELLANO: Yes, your Honor.

23 THE COURT: Mr. Castellano.
24
25

1 REDIRECT EXAMINATION

2 BY MR. CASTELLANO:

3 Q. Agent Acee, does the FBI have control of
4 the New Mexico Corrections Department?

5 A. No, sir.

6 Q. Were you housing these inmates?

7 A. I was not.

8 Q. Were you setting the rules for these
9 inmates?

10 A. In a limited capacity. I advised them
11 what the FBI's rules were. They had separate rules
12 they'd have to follow in the prisons.

13 Q. And were you the one responsible for
14 overseeing the contact visits at the prison?

15 A. I was not.

16 Q. And once this came to your attention, did
17 you ask them to investigate into it further?

18 A. I did.

19 Q. As you testified yesterday, did you ask
20 authorities, including New Mexico State Police and
21 Child Protective Services, to investigate to see if
22 there was any wrongdoing that was raised at that
23 level?

24 A. I did.

25 Q. What came of those investigations?

1 MR. VILLA: Objection, calls for hearsay.

2 THE COURT: Well, what's the result of the
3 investigation? Don't tell what was said to you, but
4 you can say what you did about it.

5 Overruled.

6 MR. VILLA: If it's what this witness did,
7 Your Honor, I don't object to that.

8 THE COURT: I think that's what the
9 question is, isn't it?

10 MR. CASTELLANO: It is.

11 A. I notified the New Mexico State Police,
12 provided the videos, and did the same with the New
13 Mexico Child, Youth and Family Development, CYFD.

14 BY MR. CASTELLANO:

15 Q. Also regarding the questions about
16 subsequent interviews, now, when you go back for
17 another interview, is the witness the only person
18 who has had other ideas since the last interview?

19 A. I don't think I understand. I'm sorry.

20 Q. This is what I'm getting to. Once you
21 interview somebody, do you also have, after you
22 think about these things, additional questions for
23 them in order to dig deeper into their statements?

24 A. I do.

25 Q. And sometimes when you ask them questions

1 or take a statement, you then try to go back and
2 verify what they said or check other sources to
3 verify their information and get additional
4 information.

5 MR. VILLA: Objection, leading.

6 THE COURT: Overruled.

7 A. Yes, sir, I do.

8 BY MR. CASTELLANO:

9 Q. Now, I want to go back to yesterday. You
10 were asked about divisions or factions in the SNM
11 and related to your grand jury testimony. Do you
12 recall that?

13 A. Yes, sir.

14 Q. And you were also asked about leadership
15 in the gang. Do you recall that?

16 A. Yes.

17 Q. Now, do you remember the discussion from
18 your grand jury testimony in the paragraph
19 immediately below that, what it said about
20 leadership in the SNM? If not, I can refresh your
21 recollection.

22 A. No, the attorney had some notes on
23 stickies and stuff. I didn't see it.

24 MR. CASTELLANO: May I approach, Your
25 Honor?

1 THE COURT: You may.

2 BY MR. CASTELLANO:

3 Q. I'll have you quietly read that to
4 yourself, the portion that's highlighted, and when
5 you're finished, tell us if that refreshes your
6 recollection.

7 A. Thank you.

8 Q. Immediately below the discussion about the
9 divisions, what did you have to say about leadership
10 or a leader of the SNM Gang?

11 A. I said that the division between Gerald
12 Archuleta and Julian Romero, the battle over the
13 wife, eventually rose to the level of the SNM
14 leadership, to Anthony Ray Baca, and he kind of held
15 court over it and determined that the hit on Julian
16 Romero was a good hit.

17 Q. Also related to that division in the gang,
18 was there any indication that even though there was
19 a division in the gang, that this was one gang, or
20 was it multiple gangs?

21 A. It was one gang.

22 Q. And in that one gang, was there division
23 within the gang?

24 A. Yes.

25 Q. You were asked about the witnesses having

1 access to discovery and the tablets. What happened
2 to some of the tablets once they were tampered with?

3 A. They were seized.

4 Q. And after that time, then, did the people
5 who tampered with their tablets have access to that
6 discovery?

7 A. No.

8 Q. And are you aware that with these
9 discovery tablets, that not all information goes
10 onto them, especially if it's sensitive in nature?

11 A. I'm not aware. I just turn everything
12 over to your office, so I'm not exactly sure what's
13 on the tablets.

14 Q. Now, related to housing and moves as part
15 of benefits for cooperators, why did you move the
16 cooperators?

17 A. For safety.

18 Q. And when you gave \$1,600, approximately,
19 to Mario Montoya to repair his RV, what was the
20 purpose for repairing the RV?

21 A. So he could drive, and drive it out of
22 state and relocate.

23 Q. There was an insinuation yesterday that
24 witnesses were threatened with the death penalty.
25 Did you threaten any witnesses with the death

1 penalty?

2 A. I did not.

3 Q. Can you tell the members of the jury
4 whether all the defendants in this case charged with
5 murder were eligible for the death penalty when it
6 started?

7 A. They were.

8 Q. Can you tell the members of the jury
9 whether all the defendants in this case have now
10 been deemed not death-penalty eligible?

11 A. All of the defendants have been deemed not
12 death-penalty eligible.

13 Q. There was also a claim of you threatening
14 families when you were investigating. Did you
15 threaten anyone's family?

16 A. No, I've not done that.

17 Q. Did you investigate some defendants'
18 family members?

19 A. Yes.

20 Q. For what types of activity?

21 A. Witness intimidation, threatening
22 informants, and smuggling drugs into the jails and
23 prisons.

24 Q. There was also discussion about what was
25 referred to as a cooperator pod. Do you remember

1 approximately how many cooperators were housed --
2 and we're going to also talk about time periods. So
3 at any given point, approximately how many people
4 cooperating were housed in that pod?

5 A. I think it started out with four, and it
6 grew to approximately ten or twelve.

7 Q. Now, what's your understanding of the
8 Marshal Service to be able to house all defendants
9 in this case and cooperators? Is there a way to mix
10 and mingle these people, or are they trying to keep
11 them separate?

12 MR. VILLA: Objection, calls for hearsay;
13 lack of foundation.

14 THE COURT: Well, why don't you first ask
15 the foundation, so we know where he's getting this
16 information from. It's a little bit compound, too,
17 so it's hard for me to figure out. It may be coming
18 from different sources.

19 MR. CASTELLANO: I'll rephrase, Your
20 Honor.

21 BY MR. CASTELLANO:

22 Q. Did you make attempts to work with the
23 Marshal Service to keep cooperators safe?

24 A. Yes, sir.

25 Q. And what attempts did you make to keep

1 them separated from the defendants charged in all
2 the cases?

3 A. Well, when a defendant agrees to
4 cooperate, I let the Marshal Service know that,
5 because it often affects housing, where they're
6 housed. I also share information from the debriefs
7 I'm conducting of the defendants -- or excuse me,
8 the cooperating defendants. I share that
9 information, some of that information, with the
10 Marshal Service as it relates to their duties in
11 safe housing and transportation of the various
12 defendants.

13 Q. And was the cooperator pod, as it's
14 called, one of the solutions that occurred as a
15 result of trying to fit all these bodies into
16 numerous facilities?

17 A. Yes, it was.

18 Q. And approximately how many bodies are we
19 talking about, including defendants and those who
20 eventually became cooperators, approximately?

21 A. All cases related to the SNM?

22 Q. Yes, all cases.

23 A. Eighty.

24 Q. So did you feel comfortable in a situation
25 where a cooperator may be housed in a pod with those

1 against whom he was cooperating?

2 A. No, not at all.

3 Q. Did you have concerns for that person's
4 safety?

5 A. Yes.

6 Q. And before each of these people moved into
7 the pod, had you already taken at least one or more
8 statements from them?

9 A. Yes.

10 Q. So before they even intermingled with the
11 other people, had you already taken a statement?

12 A. Yes.

13 Q. Now, for people like Mario Montoya -- and
14 I'll go down the list -- were they eventually
15 provided lawyers?

16 A. Yes.

17 Q. In Mario Montoya's case, he was provided a
18 lawyer because he was charged with a crime; is that
19 true?

20 A. Yes, sir.

21 Q. What about Billy Cordova? Were you part
22 of the process, even though he wasn't charged with a
23 crime, of getting him an attorney to look out for
24 his interests?

25 A. Yes.

1 MR. VILLA: Objection, relevance.

2 THE COURT: Overruled.

3 BY MR. CASTELLANO:

4 Q. What about Lupe Urquizo?

5 A. I caused Mr. Urquizo to get an attorney,
6 and then later charged him.

7 Q. So was he provided an attorney before he
8 was charged?

9 A. Yes.

10 Q. What about someone like Robert Martinez,
11 also known as Baby Rob?

12 A. Same scenario.

13 Q. How did you first meet Robert Martinez?

14 A. I went up to the Penitentiary of New
15 Mexico, Level 6, after Mr. Martinez told the STIU he
16 was done with the gang and he wanted out. The STIU
17 called me. I drove up there that same day and
18 talked to him.

19 Q. Tell us about that first interaction with
20 him. What happened?

21 A. After introducing myself and explaining
22 the nature of my investigation -- this was before
23 we'd indicted anyone; we were well on our way to
24 that, that phase 1 takedown -- I confirmed some of
25 the details that Mr. Martinez had told the STIU,

1 such as his reasons for wanting to get out, the fact
2 that when he left the pod, he surrendered a shank
3 that he had been carrying in his body. And I just
4 talked to him about his motivations to get out, and
5 then I questioned him about his history in the SNM
6 and his activities, and whether or not he'd be
7 willing to cooperate with the Government and testify
8 in court.

9 Q. What do you mean when you said he was
10 carrying a shank inside his body?

11 A. He was carrying a shank in his rectum
12 anytime he left his cell, and he surrendered that
13 when he walked out of the cell and said he wanted
14 out of the SNM pod at the prison.

15 Q. Now, for those who weren't charged and got
16 attorneys, before you spoke to them or their
17 attorneys, were they provided what's known as a
18 Kastigar letter?

19 A. Yes, sir.

20 Q. What was the purpose of the Kastigar
21 letter?

22 A. To offer them extra protections so they
23 could go on the record and give us a statement that
24 we would then not use against them.

25 Q. What's your understanding about why that's

1 supposed to promote truthfulness from them?

2 A. Well, I think it promotes truthfulness --

3 MR. VILLA: Objection, speculation.

4 THE COURT: Well, he can say what the
5 purpose of it is. He can't say specifically what
6 the effect was on any one witness, but he can say
7 what the purpose of it is. So if he wishes to
8 testify that way, he can. Overruled.

9 A. The purpose of the Kastigar letter is to
10 allow the person across the table, the defendant, to
11 speak honestly and freely without those statements
12 being used against him in the Government's case.

13 MR. VILLA: Your Honor, objection. It's
14 still speculation.

15 THE COURT: Overruled.

16 BY MR. CASTELLANO:

17 Q. There was also discussion yesterday about
18 you making phone calls to the district attorney's
19 office where Eric Duran was pending charges. Do you
20 recall that?

21 A. Yes, sir.

22 Q. And do you remember a need to get Eric
23 Duran back to New Mexico for testimony and pretrial
24 hearings?

25 A. Yes, sir.

1 Q. Was that another reason you contacted the
2 DA's office?

3 A. Yes.

4 Q. When you contacted them, once again, did
5 you ask them to dismiss any charges against him?

6 A. No.

7 Q. There was also a claim that if it wasn't
8 recorded, it didn't happen. Is that actually true?
9 If something wasn't recorded, is it true that it
10 didn't happen?

11 A. No.

12 Q. Is that something you tell informants,
13 though?

14 A. Yes.

15 Q. And why do you tell them something like
16 that?

17 A. To stress the importance of them wearing a
18 wire or a recording device, and taking that step to
19 make sure they're wearing a wire and turning on a
20 recorder.

21 Q. And for people like Eric Duran, who had a
22 cell phone, what did you tell him about what that
23 phone would be recording?

24 A. I told him it would record everything.

25 Q. And to the best of your knowledge, did it

1 do that?

2 A. No.

3 Q. What was not recorded, as best as you
4 know?

5 A. Internet activity, photographs.

6 Q. Do you know how that happened?

7 A. Yes.

8 Q. Please explain.

9 A. The court order that I obtained from the
10 Court was to conduct a wire interception or a
11 wiretap. That is, the telephone calls and the text
12 messages. So when that was served on the phone
13 company -- in this case, Verizon -- that's what they
14 captured. When I say "they," Verizon. That's what
15 Verizon sent to the FBI, and that's what was
16 captured, per the court order.

17 Q. Going back to the state case on the Molina
18 murder and the three people who were initially
19 charged, I think yesterday you said that Carlos
20 Herrera was not charged when it was a state case; is
21 that true?

22 A. Yes, sir.

23 Q. And in the context of these pods, the jury
24 will see diagrams later on, but do you remember
25 which pod Javier Molina was killed in?

1 A. Yes. Blue pod.

2 Q. And do you know where Carlos Herrera was
3 housed in relation to the blue pod?

4 A. Next door, in the yellow pod.

5 Q. And have you been to the pod? Have you
6 actually seen it yourself?

7 A. Yes.

8 Q. Is there a door that connects the two
9 pods?

10 A. Yes.

11 Q. So under these circumstances, then, if we
12 have video from the blue pod, are we likely to see
13 Carlos Herrera on that video?

14 A. No.

15 Q. Okay. Now, involving the recording
16 devices in jail, did you have cooperators who had a
17 recording device that recorded conversations with
18 some of the defendants?

19 A. Yes.

20 Q. And can you tell the members of the jury
21 whether or not it had the ability to delete
22 messages?

23 A. It did not.

24 Q. Other than an on-and-off button, was there
25 any other way to basically cause it to function or

1 do what it was supposed to do?

2 A. No, there was just an on button and an off
3 button.

4 Q. What instructions did you give to each of
5 the people who recorded the defendants about the
6 devices?

7 A. I told the defendants that I wanted them
8 to record conversations that pertained to homicides.
9 I wasn't interested in drug trafficking, anyone's
10 life story, or past escapades with girlfriends. I
11 was interested in bodies and solving homicides.

12 I pointed out to each of the men that
13 carried one of these devices how it worked, the
14 simplicity of it, an on-and-off switch. And I
15 pointed out that the batteries were small, as the
16 device was small, and that they needed to conserve
17 the battery power.

18 Q. Why did you feel it was necessary to
19 conserve battery power?

20 A. The device is small. The batteries are
21 small. These inmates are in a secure facility and
22 can't order batteries, and I can't go in and deliver
23 batteries to them. I can't ask the COs to give them
24 batteries, because I don't trust them. So they're
25 stuck in there, they've got to make these

1 recordings, they're in there for weeks, and they
2 need to make the batteries last.

3 There was a second part of that question.

4 Q. Let me move to a related question, then.
5 So with Eric Duran, had he previously had a
6 recording device that didn't appear to capture
7 conversations?

8 A. He did. Thank you. That was the second
9 part of that, that we had tried and failed before,
10 where the informant was telling me they got these
11 great conversations and admissions. I bring the
12 device back to the office, it's downloaded by our
13 technicians, and there is nothing on it because the
14 batteries are dead.

15 Q. And just a quick question, then. So you
16 said "the technicians." What actually happens to
17 the device once it's retrieved and turned over to
18 you?

19 A. I then take it to our -- we have an
20 electronic surveillance technician. I go to her
21 office. There is a counter between her and I. I
22 fill out an evidence submission sheet with the
23 device, which informant made the recording, which
24 suspects or defendants we think are on there. I
25 turn that device in.

1 Within a day or two that technician
2 contacts me and says, "I've downloaded your
3 recordings. You can come pick them up."

4 So then I return, and she gives me usually
5 three DVDs or CDs that have the recordings on it.
6 I'm then able to retain one in my file and provide
7 one to the U.S. Attorney's Office, and then the
8 third copy eventually goes to the defense.

9 Q. And who were people that Eric Duran
10 claimed that he recorded on the device that seemed
11 to fail?

12 A. Timothy Martinez, Red; Mario Rodriguez,
13 Blue. I think he said he got some recordings with
14 some other people that are defendants in other
15 matters.

16 Q. Do you recall if he reported recording
17 Mauricio Varela?

18 A. Yes.

19 Q. What about Daniel Sanchez, if you
20 remember?

21 A. I'm not sure.

22 Q. What about either Jerry Armenta or Jerry
23 Montoya?

24 A. I remember Jerry Armenta. I'm not
25 positive about Montoya.

1 Q. So even though he told you these things,
2 was there any indication that there wasn't anything
3 on the device, or was the device dead because of a
4 dead battery?

5 A. The technician just said, "There is
6 nothing on the device."

7 So then I took it to a different unit, the
8 unit that maintains the devices, which is our
9 technically trained unit, because I wanted to
10 investigate why nothing was on the device. And they
11 said that the batteries were dead.

12 Q. And is that why you later told people who
13 had those devices to conserve the batteries as best
14 they could?

15 A. Yes, and change devices. That initial
16 device you're speaking of was very small. So we
17 went to a bigger device, unfortunately, but the
18 batteries in that were also of limited capacity.

19 Q. Were there times when, if wasn't you, you
20 would at least make arrangement with someone in the
21 Corrections Department to either provide additional
22 batteries or exchange devices so you can capture
23 that evidence?

24 A. Yes.

25 Q. Who did you make arrangements with?

1 A. Two members of the Security Threat
2 Intelligence Unit that I trusted and worked with in
3 Santa Fe, Captain Sergio Sapien, and STIU Officer
4 Christopher Cupit.

5 Q. And what concerns did you have about these
6 devices being found in a secure facility, either by
7 COs or inmates?

8 A. Well, either way, that's a big problem. I
9 mean, if the other inmates find it, it's pretty
10 obvious they've got this recording device, and so
11 that's not good. And in a similar fashion, if a CO
12 finds it, that's going to get that informant or that
13 inmate in trouble because it's some kind of
14 contraband device that's not allowed in there. So
15 either way, we've got to conceal it.

16 Q. Would that cause problems with your
17 operations?

18 A. Yes, it could compromise the entire
19 operation if there are recording devices inside a
20 secure facility.

21 Q. Now, regarding people cooperating, for
22 anybody who has become a cooperator in this case,
23 have they all agreed to cooperate at the same time?

24 A. No.

25 Q. So has the cooperation been staggered over

1 time?

2 A. Yes, over years.

3 Q. And for example, Jerry Armenta. Was he
4 cooperating early in the process or late in the
5 process?

6 A. I'd categorize him as early.

7 Q. And do you recall that when it was a state
8 case, even before it became a federal case, was
9 Jerry Armenta already cooperating, or had he agreed
10 to testify against co-defendants?

11 A. I believe so, yes.

12 Q. And what about somebody like Mario
13 Rodriguez? How recently has he come to the table?

14 A. Just within the last few weeks.

15 Q. You were asked yesterday about Timothy
16 Martinez, also known as Red. Did you state that he
17 killed his good friend Mr. Molina?

18 A. I didn't say that.

19 Q. Were you asked about whether or not he and
20 Mr. Molina were friends?

21 A. Yes.

22 Q. Is it your understanding that he and
23 Mr. Molina were friends?

24 A. Yes.

25 Q. And when it comes to Jerry Armenta, do you

1 recall how much time he had left before he was
2 leaving prison?

3 MR. VILLA: Objection, calls for hearsay.

4 THE COURT: Ask how he's going to know
5 this first.

6 BY MR. CASTELLANO:

7 Q. If you knew how long Jerry Armenta had
8 before he was being released before the murder, how
9 would you know that?

10 A. From reviewing Department of Corrections
11 documents and from -- primarily from that.

12 THE COURT: Let's not elicit the answer,
13 then.

14 Q. Is it your understanding that for the
15 cooperators who pled to murder, that they pled to
16 life in prison?

17 A. Yes.

18 Q. And so with their testimony, are they
19 hoping to get something less than life in prison?

20 A. Yes.

21 Q. You were asked yesterday by Mr. Perez '
22 attorney about people taking responsibility for
23 things they didn't do in a gang. Do you remember
24 that?

25 A. Yes.

1 Q. Now, is it also your understanding that
2 people might do that, but there might also be
3 consequences for claiming something they did when
4 they didn't do it?

5 A. Yes.

6 Q. There might be consequences within the
7 gang?

8 A. Yes.

9 Q. You were asked about three homicides
10 possibly tied to Billy Cordova. Do you remember
11 that?

12 A. Yes.

13 Q. And do you recall whether or not those
14 homicides appeared to be SNM-related homicides?

15 A. Well, I initially thought all three could
16 be. Are you asking for what I discovered after
17 investigating?

18 Q. Yes. Which ones, according to the
19 investigation, appeared to be SNM-related?

20 A. The murder of Sammy Chavez and the murder
21 of an unnamed Los Carnales prison gang member.

22 Q. All right. I'm going to ask you about the
23 pizza party. What was the reason for this gathering
24 and what was served there?

25 A. The Corrections Department put together a

1 recognition ceremony, which we're calling a pizza
2 party, in recognition of these guys, these
3 cooperators, renouncing the gang and being done with
4 that and starting a program into, like, anti-gang
5 programming.

6 What was served there was, the Department
7 of Corrections provided some Pizza Hut pizzas, and I
8 think there was, like, Kool-Aid or punch. There
9 might have been sodas. I don't recall.

10 Q. About how long did the party last?

11 A. I was only there for about 15 minutes,
12 but -- so I couldn't tell you when it ended. But my
13 understanding was, they allowed them about an hour's
14 worth of time. Again, I didn't stay, though, so I'm
15 not sure.

16 Q. And were the inmates allowed to have
17 family members there?

18 A. Yes.

19 Q. And for some of the people who have
20 cooperated, has it been a while since they've seen
21 their families or been able to hug a family member,
22 for example?

23 A. Yes.

24 Q. So was that a big deal to them?

25 A. A very big deal. I witnessed -- it was

1 very emotional for both them and their family.

2 Q. And you also mentioned a graduation
3 ceremony. Was that a separate ceremony than what
4 we'll call the pizza party?

5 A. Yes, it was.

6 Q. What was that graduation ceremony?

7 A. Timothy Martinez, Red, was awarded an
8 associate's degree. I forget what the degree was
9 in. But people from the college came and awarded
10 him his certificate.

11 Q. What kind of celebration was that in terms
12 of what was provided in terms of refreshments?

13 A. I didn't take particular notice because I
14 didn't eat anything. But I think they had cake, ice
15 cream.

16 Q. You used the term "programming" earlier.
17 What do you mean when you use that term in the
18 prison context?

19 A. Programming involves the anti-gang
20 classes, anger management. There is some philosophy
21 course work. Those are primarily the ones that I'm
22 familiar with. But there is other programming and
23 educational opportunities afforded to people that
24 drop out of the prison gangs.

25 Q. What's your understanding of why they

1 would offer something like philosophy classes or
2 lessons?

3 A. Continuing education. The Department of
4 Corrections had a college professor that was
5 developing course work to work with gang members and
6 to help them work through anger issues and
7 decision-making so that they could open their eyes
8 up to other alternatives than just violence.

9 Q. Now, is that because someday these inmates
10 might be returning to the streets?

11 A. Yes.

12 Q. Now, I think our numbers here are
13 different from what the defense says. Yesterday
14 they mentioned there were four killers of Javier
15 Molina. Would you disagree with that statement?

16 A. I would.

17 Q. Approximately how many killers of Javier
18 Molina are involved in this case?

19 MS. JACKS: Objection, Your Honor. That's
20 asking --

21 MR. VILLA: Objection.

22 MR. LOWRY: Objection.

23 MS. JACKS: I think it's invading the
24 province of the jury. It's asking Agent Acee to
25 make a decision that these jurors alone are asked to

1 determine.

2 MR. CASTELLANO: I can rephrase, Your
3 Honor.

4 THE COURT: All right.

5 BY MR. CASTELLANO:

6 Q. From this investigation, how many people
7 have admitted responsibility for the murder or some
8 participation in the Molina murder?

9 A. I count six.

10 Q. Let's go over that list.

11 A. Would you like me to say the names?

12 Q. Yes.

13 A. David Calbert, Lupe Urquizo, Mario
14 Rodriguez, Timothy Martinez, Jerry Armenta, Jerry
15 Montoya.

16 Q. Are you aware of any involvement by
17 somebody named Mauricio Varela?

18 A. Yes. Seven.

19 Q. What about the defendants sitting here in
20 court?

21 A. Yes. I wasn't sure you wanted me to
22 mention that.

23 Q. Yes, we have their four, and these other
24 names. So how many does that give us,
25 approximately?

1 MS. JACKS: Well, excuse me, Your Honor.
2 Objection, this is a confusing line of questioning,
3 if Mr. Castellano is trying --

4 THE COURT: Hold on. I agree it's
5 confusing.

6 What are you trying to -- what are you
7 trying to get him to say about the men in the
8 courtroom?

9 MR. CASTELLANO: Oh, I'm just saying the
10 defense's question yesterday said there were four
11 killers of Javier Molina. What I'm highlighting is
12 how many people were allegedly involved with that
13 murder.

14 THE COURT: Why don't -- with the men
15 here, he can certainly say that the Government has
16 alleged how many of them are involved in the murder.

17 MR. CASTELLANO: And I agree, Your Honor.
18 BY MR. CASTELLANO:

19 Q. I'm not asking you to say anything about
20 the defendants. I'm just asking whether you add
21 them to this list, without --

22 MS. JACKS: Well, objection. That's
23 asking the same question.

24 THE COURT: Hold on. I don't want any
25 reference to the list. You can add -- if you want

1 to say how many people is the Government, in this
2 room, accusing of the murder of Molina, you can ask
3 that question. Then after that, stop.

4 BY MR. CASTELLANO:

5 Q. That's the question, Agent Acee.

6 A. Four.

7 MR. CASTELLANO: May I have a moment, Your
8 Honor?

9 THE COURT: You may.

10 MR. CASTELLANO: Thank you, Your Honor. I
11 pass the witness.

12 THE COURT: All right. Mr. Acee, you may
13 step down. Thank you for your testimony.

14 MR. LOWRY: Your Honor, based on the
15 redirect, we have some follow-up.

16 THE COURT: All right. Mr. Lowry.

17 MS. JACKS: Can we approach before the
18 recross starts? Because I think there is an issue
19 we need to discuss.

20 THE COURT: No. Let Mr. Lowry do his
21 recross.

22 MS. JACKS: Well, this may affect the
23 questions asked.

24 THE COURT: All right. Come up, Ms.
25 Jacks.

1 (The following proceedings were held at
2 the bench.)

3 MS. JACKS: I'll be quick. On redirect,
4 Mr. Castellano elicited from Agent Acee that somehow
5 Mauricio Varela has accepted responsibility for the
6 Molina homicide. As we sit here today, we have
7 absolutely no information of that. And in fact, the
8 charges were dismissed against Mr. Varela. So I
9 don't know what he's referring to. But if he's
10 referring to some sort of debrief, we need it.

11 MR. CASTELLANO: That's what I said the
12 investigation revealed about people who admitted or
13 were tied to the murder. And I agree Mauricio
14 Varela did not make admissions to that. So there is
15 nothing to disclose.

16 MR. LOWRY: He said he made recordings of
17 Mauricio Varela. And there is nothing like that in
18 this.

19 THE COURT: You're going to do redirect.

20 MR. CASTELLANO: The testimony was that
21 Eric Duran said he made recordings, but the device
22 did not record.

23 THE COURT: Go to your recross. I don't
24 need to rehearse it with you. Go.

25 (The following proceedings were held in

1 open court.)

2 THE COURT: All right, Mr. Lowry.

3 RECROSS-EXAMINATION

4 BY MR. LOWRY:

5 Q. Good morning, Agent Acee.

6 A. Good morning, sir.

7 Q. Agent Acee, I want to talk to you about a
8 comment you made on redirect. You said you were
9 concerned about the safety of the cooperators?

10 A. Yes, sir.

11 Q. And you know that the cooperators weren't
12 the most well-behaved group.

13 A. They were not.

14 Q. Okay. You said you didn't know what was
15 on the tablets after you seized them, that the
16 cooperators had?

17 A. Correct.

18 Q. And you know that those cooperators
19 breached the security of the tablets and used those
20 computers to access the internet, as you said,
21 access Facebook pages, access all kinds of
22 communication capacities.

23 A. Some of them did.

24 Q. Some of them did?

25 A. Yes, sir.

1 Q. And that didn't give you any concern that
2 they were using those tablets in some kind of
3 nefarious or criminal purpose?

4 A. It did.

5 Q. But you don't know what's on them?

6 A. No, sir.

7 Q. You didn't care to look inside them to see
8 what kind of communications they were having?

9 A. I did want to do that, but I had to
10 respect their rights and the fact they had
11 attorneys. I couldn't just take their stuff and
12 look through it without a court order or permission.

13 Q. And you know how to apply for a court
14 order, don't you?

15 A. Yes, sir.

16 Q. But you didn't?

17 A. I think the United States did, the
18 attorneys.

19 Q. So don't they usually share with you the
20 information they get so you can augment your
21 investigation?

22 A. Yes, we work together.

23 Q. So you didn't get that information?

24 A. As to what is on the tablets?

25 Q. Correct.

1 A. Well, there was a process. I'm happy to
2 explain it, if you want.

3 Q. No. I just want to know, did they give
4 you the information that was on the tablets so you
5 could assess whether there is any kind of safety
6 threat?

7 A. No. They're still being evaluated.

8 Q. So you're going to take your time?

9 A. I don't have them.

10 Q. Now, you said that you didn't suggest the
11 death penalty for any of the cooperating witnesses?

12 A. Oh, I didn't threaten them? I did not,
13 no.

14 Q. So you didn't -- did anyone suggest to
15 Lupe Urquizo that he could get the death penalty?

16 A. I don't know.

17 Q. But you were in the room with the folks at
18 this table interviewing Lupe Urquizo, weren't you?

19 A. Yes. I can represent that no one from the
20 FBI or, from my recollection, the U.S. Attorney's
21 Office mentioned that.

22 Q. And did you monitor the inmate calls
23 during this investigation?

24 A. No. Our task force did, but I personally
25 did not.

1 Q. Did they report to you back -- report back
2 to you things that the inmates were saying on those
3 calls?

4 A. Yes. Our focus was not on the
5 cooperators, though.

6 Q. Okay. So the cooperators could do as they
7 pleased?

8 A. No. I'm just saying that I had limited
9 resources, and there are thousands of hours of phone
10 calls, and we focused on the noncooperators' phone
11 calls.

12 Q. And you're aware that just recently, Jerry
13 Montoya had a cellphone in his cooperating unit --
14 in his cell?

15 MR. CASTELLANO: Objection, calls for
16 hearsay.

17 THE COURT: Ask him how he knows.

18 MR. LOWRY: I just asked him if he was
19 aware, Your Honor.

20 THE COURT: It's a yes/no question. Then
21 overruled.

22 A. Yes.

23 BY MR. LOWRY:

24 Q. You are aware of that?

25 A. Yes.

1 Q. Does that concern you?

2 A. Absolutely.

3 Q. Did you ask to see the contents of that
4 cellphone?

5 A. I don't want to say "allowed." I'm aware
6 that a local drug task force in the region where the
7 prison is located is investigating that, and that
8 they have the phone and have dumped it or are
9 analyzing it.

10 Q. But my question to you was: Did you ask
11 to see the contents of that phone?

12 A. In time. I have not. I'm letting them
13 complete their investigation.

14 Q. I want to move on to this Kastigar letter
15 you said you provided to people. And you said that
16 the purpose of the Kastigar letter was to speak
17 honestly and freely?

18 A. Yes, sir. But I want to be clear. I
19 don't provide the Kastigar letter. That comes from
20 the United States Attorney's Office.

21 Q. I just want to be clear. You don't know
22 if somebody is being honest with you ever, do you?

23 A. No.

24 Q. Now, you were talking about the wiretaps
25 you put on the phones. And you said that you didn't

1 request that the communications company save the
2 photographs.

3 A. No, I didn't request one way or another.
4 What we submitted was the standard wiretap order
5 which captures the phone calls and the text
6 messages.

7 Q. But those phones that you provided to
8 individuals in the prison had photography
9 capability, didn't they?

10 A. It did.

11 Q. And they could send photographs to anybody
12 they chose to send photographs to.

13 A. They could.

14 Q. And they could receive photographs from
15 other people.

16 A. Yes.

17 Q. And you could easily write something down
18 on a piece of paper, photograph it, and send it out
19 to somebody, couldn't you?

20 A. One could do that.

21 Q. And you wouldn't have any idea what was
22 being communicated to somebody on the outside.

23 A. In the manner you described, no; if it's
24 in a photo, no.

25 Q. And that didn't concern you during this

1 period?

2 A. I didn't know that we weren't capturing
3 that.

4 Q. Did you ever review the communications
5 that were transpiring with the folks that had
6 cellphones during the course of the investigation?

7 A. I had an agent assigned to those duties,
8 so I personally didn't. But he provided me with
9 summaries.

10 Q. Did those summaries tell you that the
11 individuals using those phones were sending out
12 photographs and receiving photographs?

13 A. Yes.

14 Q. Did you ask to see what those photographs
15 looked like?

16 A. No. Again, that agent was capable of
17 doing that, and did that.

18 Q. But did you ask to see what the
19 photographs showed?

20 A. No.

21 Q. So it wasn't of concern to you?

22 A. Well, it was of concern to me, because I
23 was guessing when I heard that the person was
24 sending photos -- I could surmise what it was and I
25 told that agent to get ahold of that informant and

1 tell him, "Don't be sending selfies."

2 Q. But you don't know if they were selfies,
3 do you?

4 A. I had not seen the photos at that time.
5 Of course, I have now, but I did not --

6 Q. Oh, you have seen the photos?

7 A. I have seen two photos.

8 Q. Do you know how many photos were
9 transferred?

10 A. No, sir.

11 Q. So you don't know if the folks that were
12 using these phones were sending out messages through
13 photographs to other people?

14 A. I don't think that they were.

15 Q. That's not my question. Do you know if
16 these individuals were sending out messages using
17 photographs?

18 A. No.

19 Q. Now, during the course of your
20 investigation -- I am going to move on to a
21 different topic, your investigative techniques.
22 When you talk to individuals, you routinely ask them
23 whether any criminal activity was personal business
24 or SNM.

25 A. I do.

1 Q. How do you tell the difference?

2 A. I ask them more questions and get to the
3 bottom of it.

4 Q. So if somebody who happens to have an SNM
5 tattoo goes out and commits a crime, do you just
6 immediately assume it's SNM business?

7 A. Oh, I think that's different categories.
8 I mean, in the interview, I'm trying to get to the
9 bottom of what that person I'm speaking to's opinion
10 is. Whether or not the Government or the FBI
11 believes that it's related to the gang is, I think,
12 a different matter.

13 Q. And that's just a conclusion they come to
14 on their own terms.

15 A. Sure. It's just their opinion, yes.

16 Q. Now, I want to talk to you very briefly
17 about this pizza party or the social -- what is the
18 word we're using?

19 A. Call it a pizza party.

20 Q. The pizza party. I believe yesterday you
21 called it a social engagement.

22 A. I may have. I forget which one we were
23 talking about.

24 Q. Now, when -- the idea for that pizza party
25 originated with the individuals who were assisting

1 the United States.

2 A. It may have. It originated from
3 Corrections. That's where I heard about it and got
4 an invitation.

5 Q. Okay. So do you recall suggesting to
6 Corrections that Corrections fund the party?

7 A. I don't know that I know that.

8 MR. LOWRY: May I approach, Your Honor?

9 THE COURT: You may.

10 A. Do you want me to turn the page?

11 BY MR. LOWRY:

12 Q. That's okay. Have you ever seen that
13 document before?

14 A. I have not.

15 Q. If I represented to you that that was the
16 original request that the individuals assisting the
17 United States sent, would you agree with me?

18 A. Well, I don't question your integrity,
19 sir. I believe what you tell me. I've just never
20 seen that document. I don't know the history of it.

21 Q. But that document suggests that the
22 individuals that were cooperating with the United
23 States offered to pay for the pizza party.

24 A. I'm sorry. The paragraph you had me read,
25 I didn't see that. I may have missed it.

1 Q. The paragraph I had you read said, "In
2 addition, while our resources are limited, we are
3 willing to shoulder the food-related expenses for
4 this event."

5 It was signed by Jerry Armenta, Benjamin
6 Clark, Billy Cordova, Robert Martinez, Frederico
7 Munoz.

8 A. If I had been allowed to turn the page, I
9 might have seen that. I'm sorry.

10 Q. It was at the very bottom of the page I
11 gave you in the paragraph I asked you to read.

12 A. I didn't see who signed it. I think
13 that's on the next page. I apologize.

14 Q. Oh. But in terms of who was willing to
15 fund the banquet, at least initially, those
16 individuals assisting the United States were willing
17 to do that?

18 A. That's what it sounds like to me.

19 Q. And do you recall asking the Department of
20 Corrections to shoulder the financial burden for
21 that event?

22 A. No. The conversation I had with Myers was
23 that I wasn't going to pay for it.

24 Q. That you were not?

25 A. I was not.

1 Q. With regard to the pizza party, you said
2 it was a big deal for the family to come, so the
3 individuals who were assisting the United States
4 could hug their family members.

5 A. I don't know if I said it like that. But
6 I will recognize that my observations were, yes, it
7 was very emotional and seemed like a big deal for
8 the inmates and their family members.

9 Q. And that's, for somebody who has been in
10 prison for an extended period of time, a substantial
11 benefit?

12 A. I would agree with that.

13 Q. And you could tell from the emotionality
14 of that moment?

15 A. Yes, sir.

16 Q. I believe on your redirect testimony you
17 said that you had got recordings on Mauricio Varela?

18 A. No, I did not. Eric Duran excitedly
19 represented that he did on Varela as well as some
20 other people. And that was the situation in which
21 we found out that the device had dead batteries.

22 Q. And speaking of the dead batteries, you
23 testified on redirect that you told Mr. Duran to
24 record everything.

25 A. No, sir.

1 Q. You didn't?

2 A. No, I -- quite the opposite, that I didn't
3 want people's life stories or past exploits with
4 girlfriends or -- that I was focused on murders, and
5 I wanted conversation about bodies.

6 Q. And that was it?

7 A. I gave him some limiting instructions, if
8 you will, on what I wanted. I may have said a
9 little more; but that I wasn't interested in drug
10 dealing. The focus was the Javier Molina murder.

11 Q. And in your testimony yesterday you said
12 you couldn't recall whether Mr. Duran told you that
13 Mr. Baca was eager to have --

14 A. Oh, I think that was in relation to you
15 asking me about our first meeting, my first time
16 meeting him. In my first meeting with him, I don't
17 know if he told me that. I was trying to get him
18 out the door like, "Hey, I'm Bryan Acee. I'm going
19 to take over for Katie. Here's your recording
20 device. Here's what I want. Get to it."

21 MR. LOWRY: May I approach, Your Honor?

22 THE COURT: You may.

23 A. Thank you.

24 BY MR. LOWRY:

25 Q. Do you recognize that document?

1 A. Yes, sir.

2 Q. Who drafted that document?

3 A. I did.

4 Q. And in that document, does it say that Mr.
5 Baca was eager to kill the Secretary of Corrections?

6 A. Yes, and Mr. Santistevan.

7 MR. LOWRY: Your Honor, could we mark the
8 letter to the Corrections staff requesting the pizza
9 party as an exhibit?

10 THE COURT: You may.

11 MR. LOWRY: We'd move to admit Defense
12 Exhibit EJ.

13 THE COURT: Any objection?

14 MR. CASTELLANO: Objection to hearsay, and
15 this witness said he didn't know anything about that
16 document or how it was generated.

17 THE COURT: I think I'll have to keep it
18 out at the present time, but it will be marked.

19 MR. LOWRY: Thank you, Your Honor.

20 THE COURT: Mr. Lowry.

21 MR. LOWRY: No further questions.

22 THE COURT: Thank you, Mr. Lowry.

23 Ms. Jacks, did you have further --

24 MS. JACKS: I do, briefly. I think I was
25 the last one to cross-examine so I don't know if Mr.

1 Maynard or Mr. Villa have anything.

2 MR. MAYNARD: I have a few questions.

3 THE COURT: All right. Mr. Maynard.

4 RECROSS-EXAMINATION

5 BY MR. MAYNARD:

6 Q. Mr. Acee, you were asked a few questions
7 about getting attorneys for the persons who were
8 cooperating with the FBI and about Kastigar letters.

9 A. Yes, sir.

10 Q. And I want to clarify a little bit about
11 Kastigar letters. But before I go to that, I'd like
12 to ask a couple of background questions about this
13 particular case in the investigation.

14 A. Yes, sir.

15 Q. It's all under a very complicated law
16 called -- well, racketeering laws.

17 A. Yes, sir.

18 Q. And the punishment ranges, potentially,
19 for these types of cases vary widely, do they not?

20 A. Yes.

21 Q. Just from your knowledge. I know you
22 don't have a law degree, but you've been at the FBI
23 for a number of years. So the sentences can range
24 from potentially death penalty -- not that it's in
25 this case anymore.

1 A. Yes, sir.

2 Q. And below that, the next tier is the
3 sentences can be mandatory life imprisonment.

4 A. Yes, sir.

5 Q. And below that is potentially up to life
6 imprisonment?

7 A. I believe you're correct.

8 Q. And below that, there's various ranges of
9 a certain maximum number of years.

10 A. Yes.

11 Q. And then before the statutory maximums of
12 a certain number of years, there are sentencing
13 guidelines, tables, and offense levels, and the
14 sentences can be all over the place.

15 A. They can.

16 Q. All right. Now, some of the
17 cooperators -- in fact, many of them, if not all --
18 the Bureau made sure that they had attorneys to
19 counsel them at an early juncture. Well, it's not
20 your responsibility, but you made that.

21 A. I did for many of them. I don't know that
22 I always did.

23 Q. Right. Okay. Now, the Kastigar letter --
24 basically, what is the effect of the Kastigar
25 letter? If it's agreed upon by the United States --

1 and that is done by an Assistant U.S. Attorney --

2 A. Yes.

3 Q. -- and the defendant, what's the impact of
4 the Kastigar letter?

5 A. That the defendant can tell the truth and
6 speak freely.

7 Q. Basically, isn't it that as long as that
8 person -- that person can reveal other crimes and
9 that the statements, the confessions to those
10 crimes -- the information can't be used against them
11 in a prosecution of those crimes.

12 A. As long as they tell the truth, yes.
13 That's my understanding, sir. I'll defer to your
14 legal background, for sure.

15 Q. Okay. Now -- but it doesn't immunize them
16 from prosecution for a future crime or even immunize
17 them from prosecution from earlier crimes. It just
18 means the statements and the evidence that they give
19 up can't be used against them.

20 A. Just the statements, yes, sir.

21 Q. Right. So in fact, some of these
22 cooperators revealed having been involved in prior
23 crimes, serious crimes.

24 A. Yes.

25 Q. Murder and conspiracy to murder.

1 A. Yes.

2 Q. All right. Now -- and this information
3 could have been and presumably would have been
4 explained to them by the attorneys that were
5 appointed to represent them.

6 A. Yes. I don't explain it.

7 Q. Right. Now, you mentioned that some of
8 the cooperators, as you call them, began cooperating
9 early on. One was Jerry Armenta.

10 A. Yes.

11 Q. Now, isn't it true that there is actually
12 a video of him stabbing Mr. Molina?

13 A. Yes.

14 Q. And one of the other cooperators is Jerry
15 Montoya?

16 A. Yes, sir.

17 Q. And there is a video of him doing the
18 same.

19 A. I think in the video -- actually, the
20 video looks like he punches him, but I believe it's
21 a stab, so you're correct.

22 Q. Right. So whatever they say during these
23 debriefings, the Kastigar interviews, it's not going
24 to be used against them. It can't.

25 A. Well, I hesitate, because I think if they

1 are untruthful, it can be. And I also hesitate just
2 because I'm not as familiar with the Kastigar and
3 the law regarding that as you probably are, the
4 United States Attorneys are.

5 Q. Now, that begs the question: What's
6 truthful?

7 A. That's a tough answer.

8 Q. It is a tough answer, isn't it? And
9 ultimately it's the jury's.

10 A. I'm sorry?

11 Q. Ultimately it would be the jury's.

12 A. Yeah, tough answer, I guess, transfers to
13 them.

14 Q. Because the U.S. Attorney's Office doesn't
15 really have a magic wand to know what's really true
16 and what's not.

17 A. No, they don't.

18 Q. But you had certain suspicions that you
19 wanted to investigate.

20 A. Yes.

21 Q. And you wanted the statements from the
22 cooperators to connect something to your theory of
23 history.

24 A. No, sir.

25 Q. You just said, "Tell me what you have"?

1 A. I don't really care what the cooperators
2 or any witness tells me. I'm just searching for the
3 truth. That's the challenge.

4 Q. Right.

5 A. I don't hope they tell me anything. I'm
6 indifferent to whether it helps or hurts.

7 Q. Now, the last -- you made reference to
8 another witness, Mario Rodriguez.

9 A. Yes, sir.

10 Q. And his cooperation was more recent, you
11 said a few weeks ago. Actually, it was in November,
12 I think, a couple of months ago?

13 A. I think it was at the end of November.

14 Q. Right. Now, these cooperators who have
15 been involved -- have they been sentenced yet?

16 A. No, sir. Well, the ones we've talked
17 about today have not. There are other cases where
18 people have been.

19 Q. Right. But most of them have not?

20 A. Correct.

21 Q. And so some of their -- the determination
22 of their sentence will be made based upon what they
23 say in court.

24 A. I don't know how that works, but they are
25 waiting to be sentenced at the end of the process.

1 Q. I understand.

2 MR. MAYNARD: No further questions.

3 THE COURT: Thank you, Mr. Maynard.

4 Did you have something, Mr. Villa?

5 MR. VILLA: Briefly, Your Honor.

6 RECROSS-EXAMINATION

7 BY MR. VILLA:

8 Q. Good morning, Agent Acee.

9 A. Good morning, Mr. Villa.

10 Q. You talked about getting attorneys -- or
11 helping to get attorneys for some of these
12 cooperators. Do you remember that?

13 A. Yes, sir.

14 Q. And Lupe Urquizo was one of them?

15 A. Yes.

16 Q. Lupe Urquizo admitted some responsibility,
17 allegedly, in the Javier Molina murder?

18 A. Yes.

19 Q. And then he was given an attorney, and
20 ultimately entered into some sort of plea agreement;
21 right?

22 A. The order is backward there, but yes.

23 Q. Did he plea before he had an attorney?

24 A. No, I meant the part about where he told
25 me -- where he talked to me. He had the attorney

1 before he gave his statement.

2 Q. I got it. Part of the process of having
3 an attorney is to facilitate negotiation of charges,
4 protect the client, that sort of thing?

5 A. You know better than me, but that sounds
6 right.

7 Q. Okay. You also said that Billy Cordova
8 got an attorney.

9 A. Yes.

10 Q. And Billy Cordova didn't have an attorney
11 when you came to see him at MDC and he decided to
12 cooperate; correct?

13 A. He didn't have a federal attorney when I
14 first met him.

15 Q. Right. So you were telling him, "I'm
16 going to charge you with racketeering," and he
17 didn't have an attorney to defend him against
18 potential racketeering charges.

19 A. No.

20 Q. And when he agreed to cooperate, you
21 decided not to charge him with racketeering at that
22 time.

23 A. Well, no. That decision was made by the
24 U.S. Attorney's Office.

25 Q. So he was not charged with racketeering at

1 that time.

2 A. He was not.

3 Q. And within a month or so -- we've talked
4 about this -- he talks to Mr. Perez and records Mr.
5 Perez; right?

6 A. Yes.

7 Q. It was only after that that Mr. Perez then
8 gets charged in this case?

9 A. Correct.

10 Q. And still to date, despite Mr. Cordova
11 having an attorney, he's never had to plead guilty
12 to any charges in the federal cases?

13 A. Correct.

14 Q. You discussed the state case and indicated
15 that Carlos Herrera was not charged in the state
16 case, the state case for the Javier Molina murder.
17 Do you remember that?

18 A. Yes, sir.

19 Q. Mr. Perez wasn't charged, either, was he?

20 A. No.

21 MR. VILLA: That's all the questions I
22 have.

23 THE COURT: Thank you, Mr. Villa.

24 Ms. Jacks, do you have recross?

25 MS. JACKS: On a few topics, but it's

1 going to be brief.

2 RECROSS-EXAMINATION

3 BY MS. JACKS:

4 Q. Agent Acee, you testified on redirect,
5 when Mr. Castellano asked you some questions, that
6 you're not responsible for the New Mexico Department
7 of Corrections. Do you recall that testimony?

8 A. Yes.

9 Q. And you said you can't control them.

10 A. Correct.

11 Q. Would you agree with me that they are
12 investigating or participating in the investigation
13 of this case in conjunction with the FBI?

14 A. That's true.

15 Q. And in fact, I think you testified that
16 when Robert Martinez wanted to become a Government
17 witness, it was the STIU officers from the
18 Penitentiary of New Mexico that contacted you by
19 telephone; right?

20 A. Part of that is true, yes. Part of it is
21 not.

22 Q. What did happen with respect to that?

23 A. Robert Martinez at that time didn't know
24 the FBI was investigating the SNM, because we hadn't
25 done any arrests yet. He just wanted to give up the

1 gang life and turned in his shank and told STIU
2 that, and then they called me. That's correct.

3 Q. So STIU called you on the phone and said,
4 "Hey, we got a guy here that you might be interested
5 in talking to"?

6 A. Yes.

7 Q. And just so that it's very clear, the
8 people that work for the Security Threat
9 Intelligence Unit are employees of the New Mexico
10 Department of Corrections; right?

11 A. Yes.

12 Q. And they, in fact, work at the
13 Penitentiary of New Mexico where the Government
14 witnesses later were engaging in sex acts with their
15 girlfriends and wives.

16 A. The STIU are in all the prisons.

17 Q. So they work at the prison where the sex
18 acts occurred.

19 A. Some of them do.

20 Q. Okay. Do you also have email addresses
21 for people in the Security Threat Intelligence Unit?

22 A. Some of them.

23 Q. And are you also in telephonic contact
24 with other employees of the New Mexico Department of
25 Corrections that are in other units or other

1 positions, not the STIU?

2 A. Yes.

3 Q. And you have their email addresses and
4 contacts, as well; right?

5 A. I do.

6 Q. When were the tablets seized from the
7 Government witnesses?

8 A. The day after I received the email
9 confirmation -- I previously testified about one of
10 the cooperating defendants and their attorney asking
11 me to come to a meeting at Sandoval. I attended
12 that. That cooperator claimed they were
13 compromised, sent me the email. The next day I let
14 the Marshal Service and the U.S. Attorney's Office
15 know, and then the Marshal Service caused them to be
16 seized. I'd have to go back to my reports to give
17 you the exact date.

18 Q. Do you know roughly month and year?

19 A. The year would be 2017. I think it was --
20 gosh, it's been seven or eight months. So spring,
21 early 2017.

22 Q. You testified, when Mr. Castellano asked
23 you, that you investigated some people's family
24 members for witness intimidation and smuggling drugs
25 into the prison. Do you recall that testimony?

1 A. Yes.

2 Q. Okay. You didn't investigate any family
3 members of Mr. Sanchez for intimidating witnesses or
4 smuggling drugs into the prison, did you?

5 A. No.

6 Q. You testified, when Mr. Castellano asked
7 you on redirect, that before Government witnesses
8 were allowed to intermingle, you took their
9 statement -- or you took a statement from them
10 first. Do you recall that testimony?

11 A. Yes.

12 Q. Okay. That's not true, is it, in every
13 case?

14 A. I can't think of a case where --

15 Q. Well, is there a situation where you told
16 one Government -- where you set up a meeting between
17 one Government cooperator and somebody you wanted to
18 become a Government witness, and let them speak
19 prior to you ever interviewing the person who the
20 Government witness had a meeting with?

21 A. You have to break that down for me. I'm
22 not sure I'm following.

23 Q. We talked about this yesterday. Wasn't
24 there a situation where you arranged a meeting
25 between a Government witness and someone that was

1 actually charged as a defendant?

2 A. I don't think so. I think I've had
3 meetings with cooperators and uncharged people. I'm
4 not sure that I have with --

5 Q. Well, did you have a Government -- did you
6 arrange a meeting between a Government witness and
7 an individual by the name of David Calbert, who
8 later became a Government witness?

9 A. Oh, see, I don't think that was later. I
10 think that was all the same day, and that was
11 approved through their attorneys. So I think that
12 that was all just two cooperators meeting. It
13 sounds like you're asking if one of them was a
14 noncooperator, and I don't think he was.

15 Q. Well, at the time of the meeting, was
16 David Calbert a Government witness?

17 A. He'd agreed to be.

18 Q. At the time of the meeting, had you
19 interviewed Mr. Calbert?

20 A. Yes. I was walking him out of the FBI
21 office, and Lupe Urquizo was waiting in another area
22 of the office.

23 Q. So you arranged the meeting -- based on
24 your recollection today, you're saying you arranged
25 the meeting after you spoke with Mr. Calbert?

1 Excuse me. That you arranged the meeting to happen
2 after you spoke with Mr. Calbert?

3 A. I believe so, because I think I was
4 escorting Calbert out to the STIU vehicles to
5 transport him back. But the order may have been
6 different there. I cleared it with their attorneys
7 and we all walked down there. I'm thinking it was
8 after, though.

9 THE COURT: Would this be a good time for
10 us to take our morning break, Ms. Jacks?

11 MS. JACKS: Sure. That's fine.

12 THE COURT: All right.

13 I'm going to give you this instruction
14 this morning, and then you probably won't hear it
15 anymore today. But since we are taking our first
16 break during the Government's evidence today, I'm
17 going to remind you of a few things that are
18 especially important.

19 Until the trial is completed, you're not
20 to discuss the case with anyone, whether it's
21 members of your family, people involved in the
22 trial, or anyone else. That includes your fellow
23 jurors. If anyone approaches you and tries to
24 discuss the trial with you, let me know about it
25 immediately.

1 Also, you must not read or listen to any
2 news reports of the trial. Again, don't get on the
3 internet, do any research for purposes of this case.

4 And finally, remember that you must not
5 talk about anything with any person who is involved
6 in the trial, even if it doesn't have anything to do
7 with the trial.

8 If you need to speak with me, simply give
9 a note to one of the court security officers or Ms.
10 Standridge.

11 Like I said, I'll try not to repeat these
12 things when we take breaks today, but do keep them
13 in mind each time we do take a break.

14 All right. We'll be in recess for about
15 15 minutes.

16 (The jury left the courtroom.)

17 THE COURT: Ms. Standridge did speak to
18 Ms. Sauer, and yes, Ms. Sauer meant she had no
19 relationship to the witnesses. So I think unless
20 anybody thinks otherwise, I think we're fine.

21 All right. We'll be in recess for about
22 15 minutes.

23 (The Court was in recess.)

24 THE COURT: Let's go back on the record.
25 Anybody need to discuss anything before we bring in

1 the jury?

2 MS. BHALLA: Yes, Your Honor.

3 THE COURT: Ms. Bhalla.

4 MS. BHALLA: Thank you, Your Honor. As
5 the Court's aware, we've been raising the issue of
6 late disclosures repeatedly in this case. One of
7 those involves a report dated February 16, 2015.
8 It's a security threat assessment prepared by
9 Captain Sapien and Chris Cupit. It's filled with
10 Giglio material involving almost every confidential
11 informant in this case.

12 The biggest problem with this late
13 disclosure is contained within the report. Bates
14 No. 51438 is a letter from a confidential informant
15 who gives Giglio material on almost every single
16 cooperating witness in this case, which has been
17 redacted and it's completely illegible and has never
18 been disclosed previously, and was sent to Captain
19 Sapien in 2015.

20 And I would ask the Court to again
21 consider the remedy we've requested of striking at
22 least one of the informants in this case. We would
23 move for the striking of Billy Cordova, since this
24 letter appears to involve Billy Cordova.

25 THE COURT: Are y'all preparing a motion

1 on this, or is this just disclosures?

2 MS. BHALLA: The problem, Your Honor, is,
3 we're trying to keep up with the ongoing
4 disclosures. It's really difficult for us to have
5 the time to write the motion, because we're trying
6 to process all this new discovery that keeps coming
7 in. We're doing our best, but it's not an easy job,
8 Your Honor.

9 THE COURT: When you say "redacted," is it
10 still redacted, or --

11 MS. BHALLA: Yes, Your Honor. It's still
12 redacted. In addition to being redacted, it's
13 illegible. It's like a picture copy. It's not the
14 actual letter. It's a photographic copy of the
15 letter.

16 THE COURT: Okay. I think I've seen this.
17 This is the handwritten one; correct?

18 MS. BHALLA: Do you want me to approach,
19 Your Honor, so you can see it?

20 THE COURT: I can see it.

21 MS. ARMIJO: Can we get a Bates number?
22 I'm sorry, I missed it.

23 MS. BHALLA: The Bates number that
24 contains a picture of the letter is 51438. And we
25 tried to do a search to see if this letter has

1 previously been disclosed, and we have not been able
2 to locate it.

3 THE COURT: Okay. Let me see -- Mr. Beck?
4 Do you have a response, Mr. Beck?

5 MR. BECK: Yes. It sounds like they
6 requested the letter at some point and that's the
7 way it was provided to us, a picture like that. I
8 will follow up and see if the actual letter exists
9 somewhere in an unredacted form and see if we can
10 produce that.

11 THE COURT: Do you know if it was produced
12 earlier in the case? Can you make that
13 determination? Let's see what the Government can
14 provide, and then we'll address it, and let's see if
15 it's a little bit more.

16 MS. BHALLA: Thank you.

17 THE COURT: All rise.

18 (The jury entered the courtroom.)

19 THE COURT: I failed to introduce my
20 clerk. I told you Rick Mendenhall was going to come
21 down from Albuquerque on Monday. He actually came
22 on Tuesday. He had an appointment on Monday in
23 Albuquerque.

24 Mr. Mendenhall grew up in Albuquerque,
25 went to Albuquerque Academy, then went to the

1 University of Denver; went to Georgetown University
2 for law school, and he's come home. He worked in
3 New York. He had a gap year before he started his
4 clerkship. So he worked -- well, actually, it was
5 in Washington, D.C., wasn't it, for a predominantly
6 New York firm. And I don't know. He's getting more
7 comfortable being home, eating the green chile and
8 stuff, so he may stick around. He's got an offer to
9 go back to D.C., but he may stick around.

10 All right. Mr. Acee, I'll remind you
11 you're still under oath.

12 And Ms. Jacks, if you wish to continue
13 your recross, you may do so at this time.

14 MS. JACKS: Thank you.

15 THE COURT: Ms. Jacks.

16 BY MS. JACKS:

17 Q. So Agent Acee, Mr. Lowry asked you some
18 questions about your comments to some of the
19 Government witnesses about, if it's not recorded, it
20 didn't happen. Do you recall those questions?

21 A. Yes.

22 Q. And my question to you about that is:
23 Why -- was it important to you that the Government
24 witnesses got recordings of things they claimed
25 people said to them?

1 A. Why was that important to me?

2 Q. Was it important?

3 A. Yes.

4 Q. Okay. And was it important, at least in
5 part, because the recording would help corroborate
6 what these Government witnesses were claiming was
7 said?

8 A. Yes.

9 Q. Mr. Lowry asked you some questions. This
10 is in connection with the door that joins the blue
11 pod and yellow pod out at Southern New Mexico
12 Correctional Facility. First of all, that door --
13 is that a door that people can just freely walk
14 through, or is that a door that needs to be opened
15 with a key?

16 A. It needs to be opened by the guards in the
17 monitoring station.

18 Q. The guards up in the bubble that looks out
19 onto the units?

20 A. Yes.

21 Q. They have to electronically pop the door?

22 A. Yes.

23 Q. Do you know whether the door also has a
24 key?

25 A. I don't.

1 Q. And it's a door that correctional officers
2 use; is that right?

3 A. Yes.

4 Q. It's not a door that inmates go in and out
5 of?

6 A. Not unless the officer pops it for them.

7 Q. Okay. Mr. Lowry asked you some questions
8 about video in blue pod. Are you aware that there
9 is video surveillance capability in blue pod?

10 A. Yes.

11 Q. And is that 24 hours a day, seven days a
12 week?

13 A. Yes.

14 Q. And is that video, based on your
15 knowledge, that's stored for some period of time?

16 A. Yes.

17 Q. Do you know the period of time that the
18 video is stored for and the capability of the
19 system?

20 A. I don't.

21 Q. Okay. Is there a similar video setup in
22 yellow pod?

23 A. There should be, yes.

24 Q. Have you been out to Southern New Mexico
25 Correctional Facility?

1 A. I have.

2 Q. Have you been in yellow pod?

3 A. Yes.

4 Q. And have you seen the exact same sorts of
5 surveillance cameras set up in yellow pod that's in
6 blue pod?

7 A. Yes.

8 Q. And to your knowledge, do those cameras
9 record 24 hours a day, seven days a week?

10 A. They do.

11 Q. And there is some sort of storage
12 capability for video on that system?

13 A. Yes.

14 Q. Do you know how long?

15 A. I don't.

16 Q. Mr. Lowry asked you some questions about
17 Government witness Jerry Armenta, and I think that
18 you said that he had actually agreed to become a
19 witness while the state prosecution was still
20 pending.

21 A. That's my recollection.

22 Q. Okay. Did he agree -- do you know the
23 circumstances under which Mr. Armenta agreed to be a
24 witness in the state prosecution regarding the
25 Molina murder?

1 A. No, I wasn't part of the investigation
2 back then.

3 Q. Do you know what the terms -- or what was
4 promised to him in exchange for becoming a witness?

5 A. No.

6 Q. Do you know whether he was offered a
7 sentence, a reduced sentence of 18 months in prison
8 if he were to become a Government witness?

9 A. I don't know anything about those
10 negotiations.

11 Q. Mr. Castellano asked you some questions
12 about Mauricio Varela. This was in the context of
13 people who admitted that they had some role in the
14 Molina homicide. Do you recall those questions?

15 A. Yes.

16 Q. Mauricio Varela always contended that he
17 was falsely accused of the Molina homicide; correct?

18 A. I've never talked to him. I don't know.

19 Q. You suspected him in that crime; is that
20 right?

21 A. Yes.

22 Q. And he has never admitted participation in
23 the Molina homicide to you or anyone else, to your
24 knowledge, has he?

25 A. He hasn't to me. He's had some

1 conversation with cooperators about it.

2 Q. You claim that -- or you testified, I
3 think, previously that Mr. Duran, Eric Duran, the
4 Government witness, told you that Varela had made
5 some sort of admission to him; is that right?

6 A. Yes.

7 Q. And Duran claimed that that was on a
8 recording.

9 A. Yes.

10 Q. And you were not able to corroborate that
11 information.

12 A. Not via the recording.

13 Q. Mr. Lowry asked you some questions about
14 Lupe Urquizo, and it was in regard to whether you
15 ever threatened him with the death penalty. Do you
16 recall those questions?

17 A. Yes.

18 Q. When you met with Mr. Urquizo -- let me go
19 back for a second. And I think what your answer
20 was, was that nobody from the FBI or the U.S.
21 Attorney's Office mentioned that.

22 A. To my recollection, that's correct.

23 Q. In your meetings with Lupe Urquizo, were
24 you also accompanied by members of the New Mexico
25 Department of Corrections, whether they were from

1 the Security Threat Intelligence Unit or working in
2 some other capacity?

3 A. Yes, because he was confined within a
4 prison.

5 Q. And did anybody in the meetings -- anybody
6 threaten Mr. Urquizo with the death penalty?

7 A. In no meeting -- in any of the meetings I
8 attended with Mr. Urquizo, I never heard any kind of
9 threats about the death penalty.

10 Q. Even from people not employed by the FBI
11 or the U.S. Attorney's Office?

12 A. If I'm in a room, and there's any people
13 in there, regardless of what their uniform or badge
14 says -- I have never heard a person threaten Mr.
15 Urquizo with the death penalty.

16 Q. Okay. Thank you.

17 MS. JACKS: I have nothing further.

18 THE COURT: Thank you, Ms. Jacks.

19 Mr. Castellano, do you have any redirect?

20 MR. CASTELLANO: No, Your Honor.

21 THE COURT: All right. Mr. Acee, you may
22 step down. Thank you for your testimony.

23 MR. CASTELLANO: I note that Agent Acee is
24 subject to re-call.

25 THE COURT: That's correct. And he can

1 remain in the courtroom.

2

3 UNITED STATES OF AMERICA

4 STATE OF NEW MEXICO

5

6 C-E-R-T-I-F-I-C-A-T-E

7 I, Jennifer Bean, FAPR, RDR, CRR, RMR, CCR,
8 Official Court Reporter for the State of New Mexico,
9 do hereby certify that the foregoing pages
10 constitute a true transcript of proceedings had
11 before the said Court, held in the District of New
12 Mexico, in the matter therein stated.

13 In testimony whereof, I have hereunto set my
14 hand on this 16th day of March, 2018.

15

16

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